

**REPORT ON PROCEEDINGS BEFORE**

**COMMITTEE ON THE OMBUDSMAN, THE LAW  
ENFORCEMENT CONDUCT COMMISSION AND THE  
CRIME COMMISSION**

**2023 REVIEW OF ANNUAL AND OTHER REPORTS OF  
OVERSIGHTED BODIES**

**At Jubilee Room, Parliament House, Sydney, on Thursday 2 May 2024**

**The Committee met at 9:30.**

**PRESENT**

The Hon. Cameron Murphy (Acting Chair)

**Legislative Council**

The Hon. Rachel Merton

**Legislative Assembly**

Ms Karen McKeown  
Mr Tri Vo

**PRESENT VIA VIDEOCONFERENCE**

Mr Mark Taylor

**The ACTING CHAIR:** Good morning and thank you for attending this public hearing for the Committee on the Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission's 2023 review of annual and other reports of oversighted agencies. I am Cameron Murphy, the Deputy Chair of this Committee. The Chair, Mr Phil Donato, sends his apologies as he is unable to attend today. Ms Sue Higginson MLC, is also an apology for today. Before we start, I acknowledge the Gadigal people, who are the traditional custodians of the land. I pay my respect to Elders of the Eora nation, past and present, and extend that respect to other Aboriginal and Torres Strait Islander people who are present or are viewing the proceedings online. I thank the witnesses who are appearing before the Committee today. We will begin with our first witnesses from the Crime Commission.

**Mr MICHAEL BARNES**, Commissioner, New South Wales Crime Commission, affirmed and examined

**Mr MICHAEL WILDE**, Chief Operating Officer, New South Wales Crime Commission, affirmed and examined

**The ACTING CHAIR:** I welcome representatives from the New South Wales Crime Commission. Thank you for appearing before the Committee today. As I mentioned earlier, the Chair of the Committee, Mr Phil Donato, is on apology today and I am chairing the proceedings as the Deputy Chair of the Committee. Please note that Committee staff will be taking photos and videos during the hearing. These photos and videos may be used for social media purposes on the New South Wales Legislative Assembly social media pages. Please inform the Committee staff if you object to having photos and videos taken. Before we proceed, do you have any questions about the hearing process?

**MICHAEL BARNES:** Not from me, Mr Chair.

**The ACTING CHAIR:** Would you like to make a short opening statement before we begin with questions?

**MICHAEL BARNES:** I would, Mr Chair. Firstly, I want to thank you and the members for inviting us here today. I hope I can give some context that will make you better understand the functions and structures of the Commission, that will then enable us to have an open discussion about the agency's work and performance. The most recent annual report, 2022-23, shows that we had a very busy and successful year. At any one time, we had approximately 90 criminal investigations on foot and 350 proceeds of crime applications before the Supreme Court. In 2022-23 we finalised approximately 40 criminal investigations and commenced 65 new jobs. We finalised precisely 83 proceeds of crime applications and commenced 105 new matters.

Just to give Committee members a refresher as to the structure of the Commission so that you can better understand our operation, the Operations division has recently been renamed, and it appears in the annual report as the Criminal Investigations division. We've called it the Operations division because that's what it does, and it doesn't just do criminal investigations. We've also now included a financial investigation functionality within that division. It has two primary responsibilities: to investigate organised and serious crime, and to collect, collate, analyse, and share information. The offences we investigate—you will have seen from the Act that our jurisdiction is framed very widely, but it's in fairly subjective terms what is serious. Some people would say that all crime is serious, and of course that requires us to develop policies to better identify what we should best apply our resources to. Having done that, we determined that we should look at organised crime homicides and some historic homicides that don't necessarily have an organised crime link, terrorism, organised crime kidnapping, and the most serious drug offences and associated money laundering.

We work closely with the NSW Police Force Organised Crime Squad, which is co-located in our building. We also work to and with other state crime specialist squads, such as the Criminal Groups and Homicide Squads, and various local area commands or police area commands. We have the expertise, but we don't have people to kick in doors or to take people into custody. So, working with police, we provide the evidence—both technical and financial—to enable charges to be proffered. We also work closely with the AFP and the Australian Criminal Intelligence Commission. In the reporting year, we've been involved in numerous investigations of public-place shootings and other homicides, major drug imports, money laundering offences, and kidnapping. Our Operations Division staff also participate in the joint counterterrorism team—for example, they were actively involved in the investigation of the terrible stabbing at the Wakeley church. That investigation is ongoing. Our staff remain involved in that investigation.

We've had a strong role in the investigation of public-place shootings, which understandably have caused considerable public disquiet. Although the homicide rate is much lower than it was 20 years ago, the public nature of those shootings, quite understandably, caused concern. It's gratifying, though, that murder charges have been laid in relation to all of the public-place shootings that the Commission has been involved in investigating during the reporting year. Fourteen people have been charged with murder in relation to homicides occurring between July 2022 and December 2023. Another significant cohort have been charged with other offences—firearm offences, participating in criminal groups, et cetera—connected with those public-place shootings.

The Commission's Strategic Intelligence Unit produces products regarding current and - more importantly perhaps - emerging crime themes and trends. It provides insight into criminal organisations involved in organised crime and other serious crime, the individuals behind them, the methods they use, the markets they seek to dominate, and the systems and capabilities that allow them to do that. The Strategic Intelligence Unit developed the Commission's annual *Picture of Organised Crime* report that I know has been provided to the Committee. It provides a comprehensive overview of the serious organised crime occurring in the state, and it

reflects or informs the Unit's priorities: trafficking in illicit drugs, organised crime violence, the acquisition of criminal wealth and, particularly importantly, the enablers—the professionals, and the people who use their position to assist criminals to carry out their unhelpful activities. That work is used to guide strategic decision-making within the organisation.

As members would appreciate—regrettably, but perhaps it has always been the case—there is so much crime occurring on a regular basis that a huge amount would fall within the definition of our jurisdiction, so we have to make decisions about which matters we'll look at. For example, people sometimes think that the jurisdiction is 'serious organised crime'. In fact, it's serious and organised crime—and the "serious" part is the way we get requests to participate in the investigation or reinvestigation of historic murders. At any one time, the NSW Police Force has between five and 700 unsolved homicides. Theoretically, each of those could be within the Crime Commission's jurisdiction, but you could readily appreciate that if we tried to take on even 10 per cent of them, we would be swamped with work. One of the difficult jobs that the executive has is identifying those cases that justify our involvement; that we can prioritise above the other serious crimes and organised crime that is occurring. That report I mentioned, the *Picture of Organised Crime*, helps us to do that.

Human sources—let me say something about that. You'd appreciate that, for issues of safety and protection, and ongoing effectiveness, I need to be discreet, but human sources are a capability we have highly developed. We have people within the organised crime milieu, and associates of those who are actively committing crimes, who will provide information to us—provided, of course, that their identity is kept confidential. It's a high-risk activity, because it means that our staff have to go out to remote locations and meet with serious criminals, or those involved with serious criminals, exposing themselves both to physical risk, but also to allegations of corrupt conduct. All law enforcement agencies recognise that sources are high risk. Ours are probably more highly placed than many others and, as a result, arguably create a commensurately higher risk. We think the product they produce justifies us in doing that, but we're conscious of the need to be careful about it.

Everyone's heard of encrypted communication devices these days. The crooks have heard about the fact that law enforcement is managing to crack lots of the platforms that they've been using. That doesn't mean they've gone out of vogue, but it means we've got to constantly keep up with the new platforms they develop. But it also means that human sources are again coming into their own, because so much of the information is now only passed person to person by criminals who don't trust using any electronic devices, because of the fact that they can't be sure whether they've been penetrated. That's another reason why it's important that we use sources.

In the reporting year 539 intelligence reports were disseminated by the Crime Commission to other law enforcement agencies. A large proportion of those come from information provided by human sources. Others come from the incredible work that our intelligence analysts do. They convert information, available from all sorts of sources, into intelligence by value-adding, by connecting it with other information that's either available on open source or on law enforcement databases, and creating it into something more than what we receive. We also, of course, have to rely on digital forensics in many of the cases we investigate—downloading phones or downloading computers that are seized, either during search warrants, or in hearings.

It's a regular practice in Commission hearings for the witness to be required to produce his or her phone, or for those phones to be seized during the execution of search warrants. We also install trackers and take phones off, put live CADs on, that track where people move when they're carrying certain devices. During the reporting year 530 technical deployments were undertaken. As members would be aware, one of the coercive powers the Commission has is the ability to require people to attend before hearings, where they're required to answer questions - even if the answers would incriminate them. The balancing of, or the counterbalance to, what is quite an intrusive power, is that the answers can't be used against the witness, but can be used against other people. During the reporting period we convened 103 hearings, which was a significant uptake on the previous couple of years that have been COVID-affected.

Moving to our confiscation function, in the report under review it is referred to as occurring in the Financial Investigations Division. We did a significant restructure in that area, and brought the legal directorate and the confiscation directorate into one division. They have always worked closely, but we thought having them reporting through a single ED would give us greater oversight, and involve those functions better in pursuing our strategic objectives. When you see reference to our Financial Investigations Division and hear me talking about legal and confiscation, you'll see that I'm talking about the same thing.

It's no doubt that organised crime groups are motivated by money and the power that gives them, including the power to acquire bling, gangster culture, like shiny cars, chunky watches and the like. The legal and confiscation division is involved in taking that stuff off them, so that they don't get the benefit of it but, just as importantly, so it can't be reinvested in more crime. If I am going to buy a tonne of drugs from overseas, I have

to have the money available to provide it, otherwise I'll end up somewhere else. It's the reinvestment that is the major part of disruption that we undertake—disrupt their lifestyle, disrupt their business model. During the year in question under report 368 confiscation orders that totalled a realisable value of \$41 million were made. Members would appreciate our gross budget is about \$35 million. We are one of the few agencies that gives more money back to the state than we take out of the coffers.

We do gratefully acknowledge the budgetary augmentation we got in the last financial period to further our confiscation function. That hasn't been applied to simply doing more of what we've been doing. It's a new strategy to use the confiscation powers as a disruption technique. There's no doubt that restraining someone's bank account and their assets crimps their ability to undertake further crime. It also takes the benefits of that crime away from them. In the past, we've tended to see prosecutions as the first step and confiscation as the second step. We're now configuring, or conceptualising, the confiscation function, in appropriate cases, as a primary response.

Members would be aware that high-level criminals don't usually turn up to the crime scene themselves and shoot people. They don't turn up on the wharf and take possession of the huge amounts of drugs that are imported. They employ people to do various steps, and they're very successful at compartmentalising those steps. So even when you catch one or more of the people involved in the crime, it's very difficult to prove to the criminal standard who was involved in commissioning the importation, commissioning the hit. Intelligence from sources and others will identify that person but, of course, that's quite different from having evidence to prove beyond reasonable doubt that they are criminally responsible.

Proceeds applications are determined on a much lower standard - the civil standard of proof. We only have to have a reasonable suspicion to get a freeze order and, after the court is satisfied that there is a reasonable suspicion, in many cases the defendant needs to justify how they came by the assets in question. That's what that new criminal assets confiscation team is focused on: disabling criminal networks by tying up their assets. I'm not suggesting for a moment that we'll bring applications where there's not a reasonable prospect of success, but I am suggesting we need to be a bit more adventurous in bringing those applications.

**The ACTING CHAIR:** Thanks, Commissioner.

**MICHAEL BARNES:** One more thing, if I could, Mr Chair.

**The ACTING CHAIR:** One more thing, Commissioner; otherwise we won't have enough time for questions.

**MICHAEL BARNES:** It is something I expect might be of concern to the Committee. The People Matter Employee Survey results for the year in question were significantly down, in some parts, on the two previous years, which had seen very significant uptakes. Not all bad. We had more people respond: 73 per cent, which is way above the sector as a whole, of 53 per cent. Indicators such as job engagement and job satisfaction were also very high: 80 and 79 per cent, respectively.

We went down in a couple of particular areas, as a result of the restructure I spoke to you about. That did cause a number of senior people, who had been at the organisation for a long time and were highly regarded by their staff, to leave the organisation. The dissatisfaction that caused are reflected in the People Matter Employee Surveys. We have identified the areas of the organisation that had that concern, and we're adopting strategies to respond to that: better communication, more attention to change management, ensuring employees have a formal voice or a mechanism to communicate with the executive, providing better training for our senior managers, and generally focusing more on teamwork and collaboration. Happy to take any questions, Mr Chair.

**The ACTING CHAIR:** We'll now move to questions from the Committee. Before we begin those questions, I want to inform you as witnesses you may wish to take a question on notice and to provide the Committee with an answer in writing within seven business days after receiving the question. I might just kick off with a question about money laundering and cryptocurrency. In your annual report on page 11, you talk about this as growing and increasing trend, where cryptocurrency wallets are being used to pay for kilo quantities of drugs and things of that nature. What do you have in place to measure the growth or decline of that and what steps are you taking to deal with this growing problem, as you put it?

**MICHAEL BARNES:** You touch upon a very difficult question. I came here today from a money-laundering conference on the Gold Coast. Task Force Kubera is a group made up of all the state police forces, the AFP, AUSTRAC, the ATO, and some international law agencies. The focus and priority of that taskforce is to identify opportunities to prosecute or otherwise interfere with money launderers, and a high priority of that conversation is crypto. There's no doubt that people are using that increasingly. Cash is still very significant, but crypto is becoming increasingly so.

But to respond directly to your question, each of the agency heads gave papers and updates of where we're at. What was surprising, and perhaps a bit alarming—the numbers that you asked for were different according to each of the agencies. The difficulty arises from the fact that, first, it requires two separate calculations, both of which can't be done precisely. How much proceeds are generated by crime? How much crime is there, and how much money or wealth does that generate, and then how much is laundered rather than just consumed by criminals on lavish lifestyles?

**The ACTING CHAIR:** And then how much of that is in cryptocurrency—is that the next step?

**MICHAEL BARNES:** Exactly, so you've got to go through all of those stages. Establishing that cryptocurrency is tainted is the challenge. Once you know it's tainted, if you can identify the person who's operating the wallet, you're ahead, because the blockchain—the thing that makes crypto work—is available, is public, and is unable to be erased or interfered with by dodgy accountants.

**The ACTING CHAIR:** In some ways it ought to be easier than cash because of that public availability.

**MICHAEL BARNES:** Yes. So the cash is there. Once they convert it we can follow it, but we've got to prove who put it there, and then prove its source. The numbers I would give you would be guesstimates, but it's certainly in the billions, and likely to be more than \$10 billion.

**Ms KAREN McKEOWN:** In a few areas of the annual report, it talks about female representation within your organisation. Can you please comment on the lack of female representation in terms of senior representatives within the organisation? Given that you've just gone through a couple of restructures, as you've explained, I would have thought there might have been communities there.

**MICHAEL BARNES:** Certainly. That was something that concerned me the day I arrived. I walked into the first executive meeting and everyone in the room looked like me and Mark. I mean, he's a good-looking guy, but he is a guy. That's no longer the case. The last three executives we've appointed—the Executive Director Legal and Confiscation, the Director of Proceeds and the Director of Strategic Intelligence—are females, so we now have three out of the eight senior executives are female.

**Ms KAREN McKEOWN:** Good news, thank you.

**The Hon. RACHEL MERTON:** Commissioner, I'm wondering whether we might be able to touch on the budget and if you might be able to elucidate some of your comments relating to budget.

**MICHAEL BARNES:** Every law enforcement agency could spend more money. There's no doubt that the effort to respond to crime is limited by the finances available, but we recognise that's a decision that government has to make. I'm sure every medical person who sat in this chair would tell you that; you spend more money on the health system, and you would get better health outcomes. We will spend as much as government allows us, and apply it to combatting serious and organised crime.

We have had an uplift last year that we've applied to the Criminal Assets Confiscation Team. We are still deploying that; we're still working up that capability. You'd appreciate that forensic accountants and lawyers who work in that area aren't sitting around in the suburbs waiting for us to call. It's difficult for us to recruit. We've just done a great recruitment for the legal and confiscation area of a very experienced person from both public and private who's done exactly the sort of work I just mentioned, but it's taken time to do that. At the moment, we're still spending the last budget augmentation we received.

**Mr TRI VO:** What's the percentage of murder cases that end up with the offender being charged and convicted?

**MICHAEL BARNES:** Most of the public-place-shooting murder trials haven't gone to court yet, so we won't know. Generally speaking, we get strong briefs, because we get sworn evidence by witnesses that the DPP can have regard to when determining that a charge should be preferred. But I would have to take on notice the question of how many of the homicide investigations we've been involved in have resulted in convictions.

**Mr TRI VO:** What are your thoughts on why there is high drug activity or drug usage in New South Wales? I read somewhere that about 50 per cent of Australia's activities of drug usage or drug activities are actually in New South Wales. That's a very high percentage.

**MICHAEL BARNES:** Yes.

**Mr TRI VO:** Why do you think that's the case?

**MICHAEL BARNES:** Sydney is the commercial capital of Australia, and it's no different for any other trade. The majority of the big-end drug trade comes here because we're the biggest population. It's distributed all

over Australia just as many other goods that come into Newcastle, Wollongong, and Sydney are distributed. We've got big crime gangs here, and they distribute the drugs throughout Australia. As I say, it's no different from any other industry.

**Mr TRI VO:** In your presentation today, you mentioned something about sources. A lot of your investigation depends on your sources.

**MICHAEL BARNES:** Yes.

**Mr TRI VO:** A lot of your people would meet the sources in remote areas. How do you manage that to reduce the risk for the person seeing or interacting with the source?

**MICHAEL BARNES:** You would appreciate that I don't want to discuss in public the tradecraft used by our handlers and our case managers. They are very experienced in that role. Before they make any meeting, they undertake a risk assessment that has regard to the usual place this person might operate in, and where he might be known, and then the nature of the premises that they proposed to meet in. If necessary, they can go to closed non-public areas to undertake those meetings. But, I assure you, it's a very serious question for us. If we're sending our staff out to meet with people we know are high-level criminals, we have to ensure their safety as best we can. The risk-assessment process, and relying on the great experience and tradecraft of our officers is how we do that.

**Mr TRI VO:** You know how you charge someone with an offence, for example illegal activities or laundering money, and then you have the confiscation of assets—now you do it simultaneously. Can you explain the benefits of that and the processes so that we can understand?

**MICHAEL BARNES:** Certainly. The Criminal Assets Recovery Act—the Act which allows us to bring those applications—has never been dependent upon prosecution and conviction of the person whose money we wish to seize. But the main source of the information, the main referrals, have come to us from police, who are naturally investigating crimes with a view to prosecution. To ensure that there hasn't been any muddying of the waters, or diversion of resources, it's been the practice to allow those trials to go ahead—even at the same time as we're working up the confiscation application. But it has been considered; there's no rush. We've got the crooks who have been arrested, we've got a restraining order in place over his assets or his bank accounts, and we'll now work towards the proceeds application. As I say, there isn't any need for conviction.

The change in focus has been "Do we reasonably suspect that this individual, or this group of people, is engaging in crime, and that the assets we can identify are crime derived?" If that is our view, let's flatten out on that investigation, with a view to bringing a proceeds application. In the majority of cases we'll get evidence of dealing with the proceeds of crime. If you've got a large amount of money that you've got from selling drugs, the possession of it is money laundering—it's dealing with the proceeds of crime. And so, in most cases, a charge of dealing with proceeds will result, but it's not the primary focus. The primary focus is bringing the restraining application and then the proceeds application. Taking their money—taking their bling, their fast cars, restraining their bank accounts so they can't reinvest it—has become a primary focus rather than a secondary focus.

**Mr MARK TAYLOR:** Thanks, Mr Barnes, for your opening comments. In those opening comments you made commentary about encrypted communication devices and the need to use more human sources, if I could use this phrase. I suppose human sources have come back into vogue. They probably went away there for a while with technology, but you're suggesting they're coming back. Are there legislative options or are there resourcing restrictions for you developing and training those human sources? I'm assuming that nowadays with social media and biometrics and things like that, actually having human sources is quite a lot more difficult than what it used to be.

**MICHAEL BARNES:** It is an ongoing challenge for all law enforcement agencies to recruit, maintain, and develop their human sources and concomitantly recruit, train, and maintain their source handlers. There are training programs around the country run by law enforcement agencies, and our staff do participate in those; indeed, our senior staff participate as instructors. We are very well situated with experience and seniority of the small number of handlers we've got. We've only got four people in that team. They do a great job for us.

**Mr MARK TAYLOR:** In regards to the Management Committee, your report refers to that Committee referring a number of matters for investigation. Most of those appear to be drug related. I'm assuming that's where most of the crime—or most of the large-scale crime—is happening. Is that the case? Secondly, is there once again legislative or resource improvements that you believe could be made to assist that Committee? Are there restrictions on what it can refer for investigation?

**MICHAEL BARNES:** The Committee refers matters usually on the application of the Commission. In theory, they could self-refer, but obviously they tend to allow the Commission to have the floor. They then apply the criteria that I've already mentioned, as set out in the Act. You're right that a very large proportion of the matters are either homicide or organised crime—drug imports or trafficking—and that's because such a high proportion of criminal wealth is focused around drugs. Undoubtedly also, there's a lot of fraud and other white-collar crime that we don't get involved in, and that's because there are other specialist agencies, like ASIC and AUSTRAC, that focus on those areas. The last thing we need is duplication when there is so much crime wanting to be investigated. We specialise in homicide, organised crime, and drug trafficking.

**The ACTING CHAIR:** I might just go back to the issue of dedicated encrypted communication devices. In your opening statement, Commissioner, you were saying that you didn't think this was linked to the banning of these devices, the reduction in use of them, but criminals are now having to come up with alternative ways of encrypting their communications and they're developing their own methods of doing so. Do you want to, first of all, expand on that point?

**MICHAEL BARNES:** I'll do my best, but if you need further information I'm happy to take it on notice and give you a written response. There are a number of different applications that are developed by providers. The ones that we saw a few years ago required a dedicated handset, and there were distributors who would acquire them, trick them up in the way that they needed to be. They were a proprietary handset that was commonly available. They would get them, and do things to them to enable them to be double-end encrypted. They would then sell those on their network, and it was a business stream for some crooks who had some technical capability. Some of those have been cracked.

The Ironside ANOM job is the one everyone's heard about. That was an incredibly successful operation run by the AFP. They fed these devices into the criminal community, and were then able to harvest any communication that appeared on them. As you'd be aware, the admissibility of the evidence obtained as a result of that is still under challenge, and it's something that law enforcement across the country is watching anxiously, because plenty of charges have gone down in Australia, in all of the states. South Australia is furthest ahead in the legal challenge. Because the people involved are so well funded—because of their crime, we would say—they will no doubt take that all the way to the High Court, and that will decide the case about whether or not harvesting information like that, without a telephone intercept warrant on each of the devices, was lawful.

Increasingly, though, there are platforms available that individuals can download onto their machines—onto their handset—themselves. Of course, there's always a payment required, but that download is something that we won't know about until a law enforcement officer somewhere comes across it and alerts everyone. Of course, then we've got to work out how to penetrate it. Seizing the phones is something that is a high priority in every execution of every search warrant, with a view to establishing what communication platforms or applications the crooks in question were using, and then whether they are able to be penetrated or broken. Law enforcement has been very successful in that. The crooks keep finding new ways to do it, and each time they get a new way, there's another challenge for people like the officers in our Technical Operations team. The digital forensic officers work on that sort of stuff on a regular basis.

**The ACTING CHAIR:** Is it a case of constant catch-up, where you shut down an area and they then move to a new method of encryption? Then you discover it and plug that hole, and then they've moved on again.

**MICHAEL BARNES:** Exactly. And I can't see that's going to stop. As we all know, the digital world is expanding into every aspect of our lives.

**The ACTING CHAIR:** What about the availability of assistance from providers of those devices—say, from tech companies or from manufacturers like Apple? Is there any assistance there from them under Commonwealth legislation to access encrypted messages?

**MICHAEL BARNES:** You'd be familiar with the battle that has been going on with Apple, and others, about leaving a back door that law enforcement can utilise, and you'd be aware of the great resistance the technical companies have to cooperating with that. The Australian federal authorities have very significant powers to compel the provision of information about the technical architecture of devices. We don't have that. We've been requesting access to those powers—the so-called TOLA warrants—for some years. We've been told by the oversight parliamentary committee that we'd get it, but it still hasn't come in. It's something we'll continue to pursue.<sup>1</sup>

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<sup>1</sup> The Committee received correspondence from Commissioner Barnes providing clarification on these statements which is published on the Committee's [webpage](#).

**Ms KAREN McKEOWN:** Can I ask a follow-up to that? What sort of relationship do you have with overseas agencies in terms of maybe the UK and US? Is there open sharing of intel on breaking these encryptions or in the latest technologies that are coming out, or is that more with the AFP?

**MICHAEL BARNES:** Both. At the conference yesterday, which was state-based as well as federal-based, there were officers from the Internal Revenue Service of the United States, from Drug Enforcement Administration of the United States and from the National Crime Agency of the UK. Those officers meet with our officers on a regular basis. The tension comes when we're talking about access to powers and the provision of real-time operational information. As is public knowledge, that did create some tension between some of the state-based agencies and the AFP in the last year or so. It seems to me to be largely resolved. It's obviously understandable that the AFP wants an orderly flow of information from external agencies into their law enforcement community in this state, and that appears to be happening. The short answer is yes, the overseas law enforcement agencies communicate very regularly and very effectively with Australian law enforcement.

**Mr TRI VO:** I have a follow-up question. Is that just with the United States agencies, or do you have working relationships with other countries as well—the UK, Asia, South America, Africa or the Middle East? Do you have working relationships with all the nations?

**MICHAEL BARNES:** We don't. The AFP does that, and they have many officers or a number of officers posted in those countries. They have offshore officers, and those officers communicate with us when requested. For foreign governments, we go through our national government, or our national government agencies.

**Mr TRI VO:** So for international agencies you go through the Australian Federal Police?

**MICHAEL BARNES:** Yes. That's how it works.

**The ACTING CHAIR:** Thank you for appearing before the Committee today. You'll be provided with a copy of the transcript of today's proceedings for corrections. The Committee staff will also email any questions taken on notice from today and any supplementary questions from the Committee. We kindly ask that you return these answers within seven business days. Thank you very much for appearing.

**(The witnesses withdrew.)**

**Ms KATHRINA LO**, Commissioner, Public Service Commission, affirmed and examined

**Mr CHRIS LAMB**, Deputy Commissioner, Public Service Commission, affirmed and examined

**The ACTING CHAIR:** I welcome our next witnesses, representatives from the Public Service Commission. Thank you for appearing before the Committee today. I note that this is the first time the Commission is appearing before the Committee at a public hearing. The Chair of the Committee, Mr Phil Donato, is an apology today. I am chairing the proceedings as the Deputy Chair of the Committee. Committee staff will be taking photos and videos during the hearing. The photos and videos may be used for social media purposes on the New South Wales Legislative Assembly social media pages. Please inform Committee staff if you object to having photos and videos taken. Before we proceed, do you have any questions about the hearing process?

**KATHRINA LO:** No.

**The ACTING CHAIR:** Would you like to make a short opening statement before we go to questions?

**KATHRINA LO:** Yes, I would like to. I do have a copy of my opening statement here for the Hansard team. I would like to firstly acknowledge the Gadigal people of the Eora nation and their Elders past, present and emerging. While the Deputy Commissioner, Mr Chris Lamb, and I met with the Committee in November last year to provide a private briefing, as you noted, this is the first occasion on which we are appearing before the Committee in the exercise of its oversight function with respect to the Public Service Commission. We appreciate this opportunity.

Today I would like to provide a brief overview of my functions as Public Service Commissioner and an update on some of my key programs of work at the PSC. As the Committee would be aware, the Commissioner's principal objectives and central functions are set out in the Government Sector Employment Act. These objectives and functions are wide-ranging and include matters such as promoting the core public sector values of integrity, trust, service and accountability; workforce capability, talent attraction and retention; learning and development; and equity and diversity. In the time we have, it is not possible for me to go into all of the PSC's programs of work in fulfilling our statutory objectives and functions, but I will take this opportunity to highlight some of our work.

In February, my 2023 *State of the NSW Public Sector Report* and accompanying *Workforce Profile Report* were tabled in Parliament by the New South Wales Premier. These are important reports. As the titles suggest, they provide an independent assessment of the state of the public sector as well as some rich data in relation to the sector's workforce. The PSC runs the NSW Leadership Academy, which has provided leadership development and programs to hundreds of current and future leaders since it was launched in 2015. In addition to specific programs for high-performing, high-potential senior executives, the leadership academy also offers leadership development programs for Aboriginal staff and an orientation program for new senior executives. The PSC also runs the award-winning NSW Government Graduate Program, which has employed more than 1,450 graduates since the program commenced in 2016. In addition to a primary stream, there are specialist streams for legal, digital, engineering, and social work.

The PSC conducts the annual People Matter Employee Survey and provides support and resources for agencies in developing action plans in response to their survey results. Survey results have also informed work undertaken by the PSC on matters such as bullying, sexual harassment, and workplace burnout. The PSC's capability framework underpins merit-based recruitment and performance planning and development across the sector. We are currently reviewing the capability framework to ensure it remains fit for purpose. The PSC has various programs and initiatives to support sector capability uplift, including in relation to strategic workforce planning, people manager capability, and capability of HR professionals.

The PSC undertakes important work in relation to integrity and ethics. We recently completed an in-depth review of the government sector Code of Ethics and Conduct to ensure it remains fit for purpose and is consistent with best practice. The new Code will commence this year. We have established a dedicated integrity and governance team in the PSC to support the sector in implementing the Code. This will include an e-learning module in relation to the Code, a new ethics hub on the PSC website, establishing a new community of practice for ethical behaviour, guidance for public servants on the use of social media, and working with the Australia and New Zealand School of Government to deliver applied ethics training for band 3 senior executives.

The PSC undertakes work aimed at creating inclusive workplace cultures, and a public sector workforce that reflects the diversity of the community we serve. Our Aboriginal Employment Strategy aims to attract and retain a talented Aboriginal workforce and contributes towards closing the gap. The Strategy has contributed to an increase in Aboriginal employment at all levels of the sector, and in particular at the senior leadership level.

The PSC has delivered the Everyone's Business cultural capability uplift package, which includes e-learning about the stolen generations, that was co-designed with stolen generations survivors.

The PSC is supporting a program of work across the sector to increase the number of people with disability in the public sector workforce. We have taken the lead on developing an e-learning module on disability inclusion for people managers, and are currently finalising a sector-wide workplace adjustment policy. The policy will complement a digital Workplace Adjustment Passport that's being developed by the Department of Customer Service. The PSC has also had a program of work underway since 2021 aimed at increasing cultural diversity in the sector's senior leadership cohort, noting that around half of Australians were either born overseas, or have at least one parent who was born overseas.

We also have various initiatives to embed safe workplaces and improve workplace culture. Last year I issued a statutory direction, which took effect on 1 March this year, requiring agencies to implement a sexual harassment prevention policy that meets certain minimum standards. The PSC developed a model sexual harassment prevention policy that agencies could adapt to their own context. We also launched an interactive online information assistant on sexual harassment, and are currently developing sexual harassment prevention and response training for people managers.

We've also commenced a program of work on anti-racism. On 21 March, the International Day for the Elimination of Racial Discrimination, the New South Wales Secretaries Board issued a leadership statement to set the tone from the top and make it abundantly clear that racism is not acceptable in public sector workplaces. At the PSC, we are committed to continuous improvement, and to ensuring that we are meeting the needs of our customers. In 2022 we initiated a customer research project to establish an organisational stakeholder map and baseline customer key performance indicators, and to develop a customer action plan. As far as I'm aware, we're the first Public Service Commission in Australia to conduct a customer service survey and develop a customer action plan. We will monitor progress against our customer KPIs in our second customer survey, due to run across May and June this year.

Finally, the PSC is developing a sector Strategic Workforce Plan to support the sector in preparing for the future. This work is being informed by best practice and sector-wide consultation. We are working towards completing the plan by the middle of this year. It is an immense privilege for me to lead an organisation that aims to support the New South Wales public sector to be world class. I want to take this opportunity to acknowledge and pay tribute to the staff of the PSC, who are dedicated to supporting the sector and making a difference for the people of New South Wales. The PSC has, in recent years, achieved some of the highest employee engagement scores in the sector, reflecting staff commitment and pride in an agency that works to enable a world-class public service.

**The ACTING CHAIR:** Before we begin questions, I inform you that you may wish to take a question on notice and provide the Committee with an answer in writing within seven business days after receiving the questions. I might start with the first question. I wanted to focus on employee perceptions of workplace health and safety. In the People Matter Employee Survey, I thought there were some quite alarming figures reported, where just under three-quarters of people were confident that when raising work health and safety issues, they'd be addressed promptly. Barely two-thirds of people thought there were effective resources in the organisation to support employee wellbeing. I wondered whether you had any comments around that. Is the perception vastly different from the reality or is that an area that needs to be focused on?

**KATHRINA LO:** I would start by saying that the People Matter Employee Survey is the annual opportunity for staff across the sector to give us feedback, and leaders in the public service need to take that feedback seriously. Once the results are in for the People Matter survey, I give a presentation on sector-level results at the New South Wales Secretaries Board, and we discuss themes at the sector level and what we might need to work at, at that sector level. The Deputy Commissioner also gives presentations to the executive teams at departments, so that they can understand their department results. What we do is provide resources to help agencies develop action plans in relation to their own results. I think it's incumbent on agencies to unpack the results within their own context, and then develop action plans into what are the key issues coming out in the survey.

**The ACTING CHAIR:** Those are the overall results, but do you provide particular agencies with agency-specific data?

**KATHRINA LO:** We certainly do. Agency-specific data is not only provided to agencies but published on our website. There's a high level of transparency. You can go onto our website and, for example, look up a department or agency and see their department-level results. We also provide division- and branch-level results, so long as there are sufficient numbers of staff in a business unit so as not to compromise the confidentiality and

anonymity of respondents to the survey. There can be that branch-level planning if, in fact, this issue of wellbeing or health and safety is emerging as an issue at that branch level.

**The ACTING CHAIR:** I might pass over to other members of the Committee for any questions they may have.

**The Hon. RACHEL MERTON:** I wonder whether you might be able to touch further on the People Matter Employee Survey. On page 19 of the New South Wales public sector report, it is mentioned that employee engagement has fallen. I am just wondering if you might be able to elucidate on some of those findings about employee engagement.

**KATHRINA LO:** Yes, of course. I'm happy to share some reflections on that. I do think we need to see results on employee engagement in 2023 and 2022, in the context of what the public service has had to do since probably the bushfires over the summer of 2019-20, and I think there's been a cumulative impact, in terms of what agencies and staff have had to deal with. We did see measures around wellbeing, burnout, and engagement fall off. It was interesting to see that; in year one of the pandemic it was quite high, and then we have seen it drop off as time has gone on, although in 2023 we saw a slight uptick in engagement. What I am hopeful of is that we are now on an upward trajectory again. We have certainly been providing resources to the sector to help them lift their engagement in coming years, and to address issues such as wellbeing and, in particular, workplace burnout.

**The Hon. RACHEL MERTON:** In terms of engagement with the public sector and given where we are in a post-COVID period, what would your reflections be on that, given what the impact was on staffing, on arrangements and on capacity to do work? Where are we now on that?

**KATHRINA LO:** I'll offer a couple of observations, and the Deputy Commissioner might want to add a few more. I'm actually optimistic that we can continue the upward trend on engagement. I think that we really need to look at the issue of workplace burnout, and look at ways of operating sustainably, and having a sustainable workforce. Some of the things we have dealt with in recent years, such as a once-in-a-century pandemic, and what might have previously been considered once-in-a-generation floods or bushfires, are now happening more frequently. These are becoming things that we need to deal with almost as part of our BAU. We really have to have sustainable ways of working, and a sustainable and resilient workforce. We're certainly working with the sector, and a lot of agencies are doing work in those areas because we know that we can't treat these things as one-off emergencies. We've got to have that preparedness and resilience as a workforce to deal with that on an ongoing basis.

**CHRIS LAMB:** If I might make one other comment about the People Matter Employee Survey, one of the things that I think is most pleasing this year, or in this last year, is that we have had the highest completion rate ever, of the employee survey. What that says to us and says to people who do a lot of work in engagement surveys is, people feel that it's worth completing, and it's worth sharing their feedback, because they're increasingly confident that actions will be taken as a result of their feedback. That's pleasing and I agree with Commissioner Lo that we're really hopeful and confident that we'll see that upward trend continue.

**Ms KAREN McKEOWN:** I note the 2022-23 annual report states that you commenced a review of the Code of Ethics and Code of Conduct for government sector employees, following feedback from sector stakeholders. What was the feedback, and is the new Code on track for completion in 2024?

**KATHRINA LO:** There were a number of triggers for the Code of Conduct review. First of all, we thought it was time. There was an internal trigger for that. We were also hearing messages that it is time to look at it, the world has moved on, and maybe best practice has changed, and thinking has changed. So we did have a very in-depth review that took nearly 18 months. There was a lot of consultation with the sector, including with integrity agencies. We met with integrity agencies to understand some of the issues they were seeing, including systemic issues, and whether that needed to inform changes to the Code.

There were also changes in the broader world around us, around expectations of how people would behave in the workplace, and so a lot more cognisance around things like what good behaviour looks like and what bad behaviour looks like. We really wanted that to be reflected in the Code. The review of the Code has actually been finalised. I've presented it to the New South Wales Secretaries Board and it has been endorsed by the Board. I should mention that that has occurred after consultation with unions, as well as different groups of staff across the sector. Probably this month I will be gazetting an order which will, under the legislation, then apply the Code to the government sector. It is proposed that the Code commence on 1 November and, before that time, we will have resources available to assist agencies to implement the Code, including some mandatory e-learning.

**Mr TRI VO:** I thank Commissioner Kathrina Lo and Deputy Commissioner Chris Lamb for being at the hearing today. I have a couple of questions for you. The Public Service Commission has consistently performed under budget since 2018-19—an important period. What are the main reasons for the underspend?

**KATHRINA LO:** I'll make some comments on that and then see if Mr Lamb would like to add anything. I think we have been very careful in managing our budget. We are entrusted with taxpayers' money. That is my starting point. We are entrusted with taxpayers' money, and we are stewards of the financial resources that are given to us. I would always try to manage within budget and would always prefer to go slightly under than over. That would be my starting point in terms of prudent financial management. Some of that underspend has been due to turnover in staff and being able to recruit staff, in an environment where there have been some staff shortages. Those staff shortages aren't only felt by the public sector; they have been felt by the private sector and the not-for-profit sector as well. There has been what some people have called a war on talent. We are competing for a short supply of talent.

I also think that part of it is that, in an environment during COVID, there were programs that we did pause, or work that was put on hold while we supported the sector during COVID. At the beginning of COVID, we played a significant role behind the scenes, moving hundreds of public servants to where they were needed. Initially, that was to contact tracing. During the Delta wave of COVID, that was to support Multicultural NSW, and to support communities in Western Sydney and south-western Sydney that were under a harder lockdown. Once vaccines were available, we were moving people across to the large vaccination hubs to support that vaccination rollout. I think it needs to be seen very much in the context of what we were living through as a sector in the last few years. I'll see if Mr Lamb has anything to add to that.

**CHRIS LAMB:** The only thing I would add is that, during that period of COVID and lockdown and people increasingly working remotely, we had to change the whole delivery model for things like our Leadership Academy program. Obviously, that changed the cost structure of that quite a bit, delivering them hybrid, and you didn't have venues to hire and things like that. Some of those things contributed but, fundamentally, Commissioner Lo's first comment is worth reiterating: We always consider very carefully how we spend taxpayer dollars and we definitely prefer to err on the side of spending a little less than more.

**Mr TRI VO:** Full-time equivalent employees in key occupations have been similarly steady, apart from the radical drop in the number of bus drivers from 2,665 in 2021 to 59 in 2022. This is on page 16 of the public sector report. There is a big drop in bus drivers from 2021 to 2022. What do you think are the reasons for this, and have you received any feedback from the bus drivers?

**KATHRINA LO:** I'll just start with a comment and then hand over to Mr Lamb. What I would say is that we report on the data. It is up to agency heads to manage their workforces, including attraction and retention to their specific workforces. We will be able to help with things like employee value proposition and recruitment guidance, but it really is the role of secretaries or agency heads, as employers of their staff, to work on ensuring that they have the right staff or sufficient staff. I'll hand over to Mr Lamb to add to that.

**CHRIS LAMB:** Just one brief point to add, so it's the advice given to us by Transport, when we raise questions about things like that in relation to bus drivers, is there has been an increasing trend on outsourcing those services to private providers. We offer that purely by way of providing their explanation, rather than to suggest that we've done any analysis on that ourselves.

**Mr MARK TAYLOR:** Thanks, Commissioner, for your opening comments and also your work over the last period of time. I want to talk about graduates and the graduate intake. It's my understanding that the graduate intake is as big as it ever has been. What's the rationale behind you supporting large numbers of graduates, and is that program working well?

**KATHRINA LO:** Yes, so the numbers of graduates are actually determined by the departments and agencies who employ the graduates. About this time every year, we actually go out to department heads and agency heads to ask them how many graduates they would like for next year. We've just gone out and asked them how many they would like for 2025. The numbers are actually a reflection of the demand by agencies, taking into account their own needs, their own workforce planning, any skills gaps that they might have. That's how we determine the numbers. In relation to the second part of your question, in terms of how's the program going, we would say it's going really well. We get great feedback from graduates, and great feedback from the employers of those graduates. But I think a really good measure of how well it's going is the fact that we do very well winning external awards for the graduate program, and have won multiple external awards, year on year, for those programs. I'll see if Mr Lamb would like to add anything to that.

**CHRIS LAMB:** I might add one piece of information. Commissioner Lo mentioned in her opening remarks that there are now five streams in the graduate program. Of course, when we started the graduate program in 2016 there was only one. So we have grown the breadth of qualifications and experience we're looking to bring into the program. We have also increasingly brought on more and more public sector agencies into the program. Back in 2016 we would say we were only recruiting 25 graduates on the graduate program, but there were other graduate programs that existed in other agencies around the sector. What we've seen over the subsequent years is increasing confidence from the sector that the PSC are best placed to run this program centrally—which we do—which is why the program has expanded. We do now have those five streams. We see more than 4,000 applications every year, which is a real testament to the perception of the quality of the program from outside the sector, as well as the awards that Commissioner Lo mentioned.

**Mr MARK TAYLOR:** The continuation of those graduates into full-time employment—do you have any stats or information on that?

**KATHRINA LO:** Yes, we certainly do. At the end of the program, all of the graduates have a guaranteed place in the sector at a clerk grade 3/4 level, but what we're finding is that grads actually get promoted very, very quickly. So we see them rise through the ranks very quickly. We now have grads that were in the first intake that are starting to enter the senior executive ranks, which is fantastic because the graduate program has proven that it provides a pipeline of future leaders for the sector. The other thing I would mention is that the retention rate is really high. It generally goes between 75 and 80 per cent of grads remaining in the sector two years after they've left the program, so the retention rate is great. I think one of the reasons why we established more streams, particularly in the digital area, was that we were finding that the war on talent for digital talent, was very competitive and very hard. We thought that if we started this digital stream we could grow our own talent, and it has proven very, very effective. The number of requests for graduates for that stream has increased since we've set up that stream.

**Mr MARK TAYLOR:** In relation to the Closing the Gap space, there's a comment that the organisation is going to build partnerships with community-controlled organisations. Have you got any examples of those outside community organisations that the sector is partnering with?

**KATHRINA LO:** With our own work, we partner with Aboriginal organisations all the time in developing our work. When we developed the learning on Stolen Generations, we worked with Stolen Generation survivor organisations. When we develop our Aboriginal employment strategy and the different limbs within that, we work with agencies that are part of the council of peak Aboriginal organisations. That work is continuing, but I think it's also important to note that what we're needing to do as a sector is transform the way we work with Aboriginal communities and their organisations, and that does involve working as a partnership, rather than us imposing our ideas. In some cases, we're talking about a shift in the power balance, and handing over some of that power and decision-making to Aboriginal organisations. I think there is a big shift that's still occurring and needs to occur within the sector.

**The Hon. RACHEL MERTON:** Commissioner Lo, if I could just pick up on some earlier comments in terms of the New South Wales public service and in terms of COVID and wanting a resilient, well prepared—in terms of natural disasters and stuff going forward. There have been some comments from members of the public about what they view and have experienced as unoccupied or under-utilised government offices, in terms of flexibility of workplaces or new work practices that may have now become more of an established system of working in the current post-COVID environment. I'm just wondering whether you may have any reflections on that, in terms of members of the public witnessing this and reporting this, in terms of the new workplace arrangements and unoccupied government offices?

**KATHRINA LO:** Yes, I'm happy to offer some reflections on that. I think the starting point is to recognise that around 85 per cent of the New South Wales public service workforce is classified as front line. That will have an impact on the different sorts of flexibility that those workforces can access. The other point I'd like to make, drawing on the People Matter Employee Survey data, is that nearly 60 per cent of people who responded to that survey said that they haven't worked from home at all in the past month. I think what COVID has done is put the focus on working from home as the form of flexibility that exists, but we've had flexibility in the sector for a long time, and there are many forms of flexibility.

I think the debate, in recent times, might have focused on working from home. But I think we need to see that in the context of a sector that has been committed since Mike Baird was Premier and introduced a policy of flexible work on an "if not, why not" basis, as long as service delivery is maintained or improved. We need to see that that is part of our employee value proposition. It is part of attracting and retaining a diverse workforce—

in particular, women. And we also know that it benefits Aboriginal people to work on country, and people with disability to be able to have the flexibility to work from different locations. I think we need to see it in that context.

I know that departments, with support from Property and Development NSW, are looking at the floor space that they have, and looking at whether any changes need to be made to that floor space. But I think that we can't shy away from—there is a raft of different forms of flexible work. The debate has been on working from home. I would say that, based on our data, fewer public servants now are working from home, and we have to remember that the vast majority of the workforce in the public service is front line. Do you want to add anything, Deputy Commissioner?

**CHRIS LAMB:** Perhaps just to say that we work closely with Property and Development NSW in developing that strategy for workplaces and offices for the future, which include things like accessible design—those types of considerations—but also considerations around how much floor space do we actually need in the sector going forward.

**The Hon. RACHEL MERTON:** Is there a monitoring system or something in terms of occupancy, or is that managed at the agency level?

**KATHRINA LO:** At the agency level.

**CHRIS LAMB:** Yes. Property NSW do work very closely with property heads for each agency though, so they are engaging in those conversations on a regular basis. They talk about what sort of ongoing floor space is required, and there are a number of conversations, I think, that they are engaged in with Treasury, and looking at future models for workplaces, and how we might structure those, and how we might increasingly share facilities across departments. Those types of things are all being explored.

**KATHRINA LO:** I might also add to that, that when people are working in a hybrid format, when they come into the office, there are different things that they do. We are looking at more collaborative spaces in the office. When you come into the office it is to do teamwork, it is to do the brainstorming and the planning together. Certainly at the PSC we have changed the design of our floor space to provide more collaborative space for staff when they are in the office. All our teams have team days, where they are in the office, and they have their team meetings, and they work together, because there is nothing more demoralising than coming into the office, none of the rest of the team is in, and you are sitting at your workstation doing team meetings, which you could have done at home. I think we are still really looking at how to be efficient and effective when we are working in that hybrid way, but also noting that there are many staff in the public service that just cannot work from home, due to the nature of the roles they perform.

**The ACTING CHAIR:** Commissioner, I might ask a follow-up question on ethics. The requirements under section 83B (2) and (3) of the Act, how many people have asked for ethical advice before leaving?

**KATHRINA LO:** Only two. I have only provided advice in two instances since the legislation started. A third person did seek advice but they did not fall within the criteria, within the legislation.

**The ACTING CHAIR:** Is that going to be reported in forthcoming annual reports—how many people—and is there some sort of matrix where that will be reported?

**KATHRINA LO:** Yes, I can report on the total numbers, but what I would be, I think, hesitant to do is to go into details. People provide me with information in confidence to assist me in providing advice back to them, and that advice back to them is also provided in confidence. Without a specific power I would be very hesitant to go into that level of detail, but I am happy to share absolute numbers of requests that I receive.

**The ACTING CHAIR:** I am wondering whether there are any insights or reflections you might have, in terms of where this Committee might look at legislative change that could assist people—where there is a way to extract that information without running over the top of the confidentiality issue. Is there some way where you would be able to articulate whether there are particular themes or issues that are emerging that could be addressed?

**KATHRINA LO:** Sure. Firstly, I would note that we have a very small sample size at the moment.

**The ACTING CHAIR:** I know it's hard. It's so small.

**KATHRINA LO:** A sample size of two.

**The ACTING CHAIR:** It might be extremely difficult.

**KATHRINA LO:** Yes. I really appreciate the offer of the Committee to see how they could assist, but what I would request is that we have a bit more time to see how the legislation operates, and get a bit more experience of how it is operating in practice, to see if any fine-tuning is needed. Some of that fine-tuning may not

be at the legislative level; some of that fine-tuning may be in terms of the forms that we have designed to ask people to provide that information to us, and the nature of the advice that we give back. I would request a bit more time to see how the legislation operates in practice and get a larger sample size before I come back to you, but I'm certainly happy to continue the conversation with you as to whether we need to do any fine-tuning at the legislative level, or at the more administrative level, in terms of what we handle at the PSC.

**Mr TRI VO:** What insights have you gained from the increase in the gender pay gap from 4.1 per cent in 2021 to 4.5 per cent in 2022, and do you anticipate a further increase in this figure in the future—to address the gap?

**KATHRINA LO:** I do have a note on gender pay gaps. I think the first thing to note is that we measure gender pay gap in New South Wales using an OECD method, which looks at median remuneration comparing females and males, whereas the Workplace Gender Equality Agency uses a different methodology. So I would first say we can't compare with what the Workplace Gender Equality Agency reports. It's very hard for me to predict what the future might hold, and I wouldn't want to try and speculate before the actual data comes in. The pay gap very much reflects the compositional make-up of the workforce. Because the median remuneration applying to nurses is fairly fixed—because we have a lot of nurses—we then look at what is happening to male remuneration.

Last year we had a decrease in the number of men being paid below the median. That's what impacted on the gender pay gap. It's quite technical, I know, but it reflects the composition of the workforce. That's not to say that there's not more that we can do. You know that we have been working for a number of years on increasing the number of women in senior leadership roles, and we are getting closer to gender parity on that. We also know that offering flexibility is helpful when it comes to supporting women in the workforce. Over the last few years, we have reformed paid parental leave and it's now gender neutral. We're encouraging men to take up their entitlement to paid parental leave. I might see if the deputy commissioner wants to add anything else.

**Mr TRI VO:** Is the one for males the same as for females?

**KATHRINA LO:** The entitlement to paid parental leave?

**Mr TRI VO:** Yes.

**KATHRINA LO:** Yes, it certainly is. Do you want to add anything?

**CHRIS LAMB:** Nothing to add.

**The ACTING CHAIR:** That's all the questions that we have. Commissioner and Deputy Commissioner, thank you for appearing before the Committee today. You will each be provided with a copy of the transcript of today's proceedings for corrections and the Committee will also email you any supplementary questions from the Committee. I don't think either of you took anything on notice today. We kindly ask that you return those answers within seven business days. The Committee will now take a break until 11.15. Thank you for your good work and for appearing today before the Committee.

**(The witnesses withdrew.)**

**(Short adjournment)**

**Mr PAUL MILLER**, Ombudsman, NSW Ombudsman, affirmed and examined

**Ms MONICA WOLF**, Chief Deputy Ombudsman, NSW Ombudsman, affirmed and examined

**Mr CHRIS CLAYTON**, Chief Operating Officer, NSW Ombudsman, affirmed and examined

**The ACTING CHAIR:** I welcome our next witnesses, representatives from the NSW Ombudsman. Thank you for appearing before the Committee today. Please note that the Chair of the Committee, Mr Phil Donato, is an apology today and I'm chairing the proceedings as the Deputy Chair of the Committee. Committee staff will be taking photos and videos during the hearing. The photos and videos may be used for social media purposes on the New South Wales Legislative Assembly social media pages. Please inform the Committee staff if you object to having photos and videos taken. Before we proceed, do you have any questions about the hearing process?

**MONICA WOLF:** No.

**PAUL MILLER:** No.

**CHRIS CLAYTON:** No.

**The ACTING CHAIR:** Would you like to make a short opening statement?

**PAUL MILLER:** Yes, thank you. I firstly begin by acknowledging that we're meeting on the traditional lands of the Gadigal people of the Eora nation, and I pay my respects to all the Elders past and present. We last appeared before this Committee in 2022 for the review of our 2020-21 annual reports, and I note that the constitution of this Committee has also changed following the 2023 election. That being the case, I will ambitiously try to both be very brief but also cover as much ground as possible in scanning key developments since our previous appearance.

Firstly, our published reports, which are the most visible aspect of our work for Parliament. Since our last appearance we have tabled two annual reports, two public interest disclosure oversight annual reports, and a PID steering committee annual report. We have published annual and biennial reports on the work of the Child Death Review Team, which is the subject of a separate hearing immediately after this one. We have tabled seven special reports, two of which summarise all formal investigations we completed in the previous 12 months.

As an indication of the variety of matters we investigate, our 2022-23 summary report dealt with investigations about whistleblowing, including claims of reprisal for speaking up; delays and the adequacy of actions to address backlogs in the processing of applications under mining legislation; failures to adequately respond to child protection risk after a child was presented to a public hospital; procedural failures relating to disciplinary charges for an inmate; and issues relating to the hiring of a contingent worker in an executive role. Other special reports we tabled related to local council compliance with PID policy requirements, children presenting alone to homelessness services, and the administration of policies aimed at reducing the over-representation of Aboriginal children in out-of-home care.

We have been particularly active recently in relation to automated decision-making and AI, in the context of increasing use of those technologies by agencies. In March this year we tabled *A map of automated decision-making in the NSW Public Sector*, which we had committed to do in our major 2021 report on the use of automation for administrative decision-making. The mapping report represents the first attempt in New South Wales to comprehensively make visible the ways in which the public sector is using, or currently planning to use, automated decision-making systems in the performance of their functions.

Just this week, I tabled a report bringing to a conclusion our investigation of Revenue NSW and the lawfulness of its garnishee order process. In many ways, these special reports provide a very limited perspective on the work that we do day to day. By its nature, much of the work of an ombudsman's office is, and must be, conducted in the absence of the public, and that is especially the case of our complaint-handling and system-monitoring work. Most complaints do not result in a formal investigation but, instead, attempts are made to resolve the complaint at the earliest possible opportunity and in the most efficient manner. Often this occurs by way of informal investigation, or what our Act describes as preliminary inquiries, which involve engaging directly with both complainants and agencies to work out what has happened, providing clearer explanations to complainants, as well as opportunities for agencies to reconsider their conduct and take corrective action.

Last year we reported that we had increased by 69 per cent the number of actionable complaints that we were able to make preliminary inquiries on, and largely that is a result of the flow-through of changes to our agency funding over the last few years. I'll turn now to talk about the funding of our office, and what changes to

our funding have meant, in terms of the work we have had to do over recent years, and are continuing to do, to effectively rebuild our office. It is important, first, to consider the circumstances that were facing our office in the years leading up to 2021. First, obviously, COVID-19. The immediate impact of the pandemic and the related lockdowns and work-from-home orders were especially challenging for our office, as our legacy systems—some of which are over two decades old and run on on-premise servers—meant that we were grossly unprepared to support remote or hybrid ways of working.

The volume and nature of complaints to us changed with the pandemic, too. Complaint numbers fell with the reduced activity of many government services, although we received a spike in complaints about some issues related directly to the COVID response, such as the experience of those in custody, with custodial complaints five times higher in 2021-22 compared to the previous year. The pandemic peaked just as we were dealing with the effects of the previous few years, of significant losses of jurisdiction and associated resourcing. Most importantly, these included the impact of the loss of our police complaints and investigations jurisdiction, beginning in 2017; the loss of large elements of our disability services oversight, with the transition to the NDIS; and the transfer of our child-protection reportable conduct functions to the Office of the Children's Guardian in March 2020.

I observed at the time that the confluence of all these factors had brought into stark relief the significant and chronic extent of underfunding of the Ombudsman's ongoing core functions, as well as the long-term underinvestment that had occurred in our core systems. In many ways, the years since 2021 have marked the beginning of a turning point for our office. In 2022, I informed the Committee that the government had agreed to a review of our baseline funding, as well as the conferral of a number of enhanced legislative functions. I am pleased to report today on some of the progress we have made since that time. Beginning in the 2022-23 state budget process, we presented a detailed analysis to Treasury of our base-level funding needs. This analysis formed the foundation for a number of budget proposals that were ultimately accepted by government.

Some increased funding we have received has been to enable us to perform new or enhanced statutory functions. These include, first, our work to oversight and support the implementation of the new public interest disclosures regime. We have also received funding to establish a small Whistleblower Support Unit, which aims to contribute to a speak-up culture by ensuring that officials have access to resources, information, and referral to support if they are planning to, or have, made a PID. Second, we received some additional funding to enable us to monitor and report on the Mandatory Disease Testing Act, which commenced in July 2022. And, third, from 2023-24 we are establishing a small Health Administration Branch, led by a dedicated Deputy Ombudsman, which responds to a parliamentary committee inquiry that was looking at health and hospital services, particularly in regional and rural areas.

Perhaps more importantly for our sustainability and effectiveness, from 2022-23 we also received some increased base funding for existing statutory functions that had been critically under-resourced, as well as one-off funding to replace or modernise a range of legacy systems and infrastructure that were no longer fit for purpose. With this re-baseline funding, we have now returned to staffing levels closer to those we had prior to 2018. We've also been able to coordinate a number of transformational projects, including the replacement of our legacy digital complaints form and case management system.

We acknowledge that we are some way from reaching the full impact of our transformative projects and additional staffing and are still managing through change. For example, with some additional staffing in our complaints and resolution area, we are able to consider reorganising those staff into teams, each with particular sectoral focus. We expect this will reap benefits in terms of some sector specialisation, improving staff capability, better liaison with agencies, improved system insights, and improved consistency of complaint responses. It will also assist us to identify underserved sectors, either where we are not seeing the complaints that we might otherwise expect, or where constrained resourcing has meant that we have been unable to act on complaints in the past where action might be warranted. At this stage, we are looking at five teams, including the current Detention and Custody team.

Before closing, I would like to take this opportunity to quickly acknowledge the hardworking staff of my office and thank them for their dedication in discharging our functions and pursuing our vision. While obviously there are challenges in being very understaffed, as we have been for much of the recent past, there are different challenges that come with the rapid attempt to rebuild the office from a low base. For staff, the recent years have involved continuing to deliver on the important work that we do every day to serve the people of New South Wales, while also trying to work on replacing decades-old case management and other systems, recruiting, onboarding and training significant numbers of new staff, and creating and refreshing business operating models, policies and procedures.

I'm particularly pleased that in this context of change, we have been able to not only maintain, but over recent years see improvements in, the results of our People Matter Employee Survey. I'm also pleased with the steps that have been taken to use the opportunity of significant recruitment action to enhance the diversity of our office, including by a concerted focus on recruiting and retaining First Nations colleagues. With me today is Monica Wolf, Chief Deputy Ombudsman, and Chris Clayton, Chief Operating Officer. We are happy to expand on anything I've mentioned or answer any other questions.

**The ACTING CHAIR:** Before we begin questions, I wish to inform you as witnesses that you may wish to take a question on notice and provide the Committee with an answer in writing within seven business days after receiving those questions from the secretariat.

**Mr MARK TAYLOR:** Thank you very much, Ombudsman, for that opening comment. Can I just take you to your commentary about the increase in complaints and investigations around custodial services? I think you indicated that was during the COVID period for this reporting period. Have you looked at those? Is there any other reason you see for the increase in those complaints?

**PAUL MILLER:** No. As you say, the spike in complaints correlated very clearly with COVID, and with the actions being taken by Corrective Services during that period to, essentially, try to thwart and then contain any possible outbreak. There have otherwise been increases in complaints to our staff in relation to custodial services continuing since COVID. I suspect a significant reason for that is, essentially, our increased capacity to visit centres over recent years. Obviously, during COVID we were very limited in our ability to provide an on-premises presence in any of those facilities. Even prior to COVID, funding issues meant that visits were relatively infrequent. Since COVID we've made a concerted effort to increase our visitations to correctional centres, and also Youth Justice facilities. Inevitably, being present, and providing that opportunity for inmates to make complaints essentially face to face, leads to an increase in the quantity of complaints that we receive. I don't think that that necessarily indicates any significant change in what you might describe as the issues that are occurring in Corrective Services. It's more about our increased awareness, visibility, and ability to take action on those.

**Mr MARK TAYLOR:** You also touched on the Mandatory Disease Testing scheme. Could you elaborate on that, your role and any identification of issues, or how it's functioning as far as your office is concerned?

**PAUL MILLER:** Yes. The Mandatory Disease Testing Act commenced in July 2022. Under that Act we have a function of monitoring the operation of that legislation and reporting on it. The Act provides that we are to prepare our first report as soon as practicable after 12 months of operation of the regime. It was obviously July 2023 when that 12 months was up. We're going to report on the first 18 months of operation of the regime. The reason for that, largely, is that the use of Mandatory Disease Testing applications and orders was a slow take-up. In the first six months we saw very few applications, presumably, as relevant agencies and their officials became aware of the mechanisms and processes that were in place to deal with it et cetera.

We're currently preparing our report. We expect a report in the middle of this year on the operation of the regime. What I will say, in respect of our observations to date is, in terms of broad numbers, we're looking at around 100 applications that have been made to seek an MDT order in that 18-month period—something around 100. The majority of those are made by police officers. Most of the remainder are within the correctional centres and the facilities. Beyond that, we're analysing the reports that we're receiving about those, in order to identify and report on the issues.

**The Hon. RACHEL MERTON:** Thank you, each of you, for being here. Your participation today is very valuable to us. If I could touch on the oversight of the Aboriginal Affairs program, I understand that there have been some changes in terms of oversight of such programs. Under part 3B of the Ombudsman Act, how is this functioning in terms of responsibility for Aboriginal Affairs programs in New South Wales?

**PAUL MILLER:** As you mentioned, we have an express function of overseeing Aboriginal programs, as defined by the Act. The Act defines them by reference to regulation. Since 2014, when we were conferred that function, the regulation has prescribed one Aboriginal program, which is OCHRE. In 2014 it was the government's comprehensive program for Aboriginal Affairs. OCHRE, in a sense, was the branding of all things Aboriginal Affairs. That function is discharged by a Deputy Ombudsman, who is an Aboriginal person. The current Deputy Ombudsman is Leanne Townsend. In relation to how the function has changed, what has changed over time is the positioning of OCHRE, in the context of the broader initiatives that the government undertakes, in what we can describe generally as the Aboriginal Affairs space.

Obviously, since 2014 there have been significant changes, not only within the state, but nationally, in relation to Aboriginal Affairs, the most obvious being Closing the Gap and the initiatives that are being pursued

under that—if I can call it this, and I don't mean it in a disparaging way—branding, rather than under OCHRE branding. What it means for us is that our express function of monitoring and assessing programs at the moment is legislatively tied to, and therefore limited to, OCHRE. We have approached government, requesting an amendment either to the regulation or to the legislation to clarify the intent: that our oversight was meant to cover, essentially, all things Aboriginal Affairs, not just what happened to be within one particular program, particularly given that it is still somewhat unclear. And I think the government is still working through what future OCHRE itself has. There's discussions about an OCHRE 2.0, if you like. But it's unclear at this stage what that would look like. What we're seeking is a legislative amendment or a regulation that will clarify that our jurisdiction to monitor and assess covers all Aboriginal programs, irrespective of how the government of the day might decide to describe them.

**The Hon. RACHEL MERTON:** Would that mean that today, in the current environment, we would have some Aboriginal Affairs programs operating here in New South Wales with no oversight if it doesn't fit this OCHRE sort of classification?

**PAUL MILLER:** It would be overstating it to say that there's no oversight, because, even without that specific function of monitoring and assessing programs, our other functions, under the Ombudsman Act, and under the Community Services legislation, for example, continue to apply. If I can give you an example, the report that we tabled—I think it was at the end of last year—on the government's initiatives strategy to reduce the over-representation of Aboriginal children in out-of-home care—that work was done under our community services function rather than under our Aboriginal program oversight function. And, similarly, our complaints and investigation jurisdiction would continue to apply in respect of all government programs, whether they're Aboriginal programs or otherwise. It is just that that specific proactive oversight that is provided for in part 3B by a dedicated Aboriginal Deputy Ombudsman—that might be lacking in some areas, yes.

**The Hon. RACHEL MERTON:** Just to clarify, if you could maybe just elaborate on what "oversight" actually means. Is it outcomes, value for money? What does "oversight" mean?

**PAUL MILLER:** I'll hand to Monica in a moment to elaborate. But, essentially, what we've done since—Leanne Townsend joined us as Deputy Ombudsman, now, about 18 months ago, I think. With the changes to what the government has done with OCHRE, with our change of Deputy Ombudsman, what we've done over the recent period is refreshed our framework for overseeing Aboriginal programs. So we now have a kind of quite explicit monitoring framework, which is very much about assessing, yes, both the execution of programs—are they being executed in accordance with the way they were intended to be executed?—and the outcomes of those programs—are they delivering what they were intended to achieve?

**MONICA WOLF:** That's right. Essentially, we'd look at two key areas. One is the process of those programs and the outcomes, considering things such as policy review, looking at what baseline data will tell us, whether those programs are actually meeting their goals, consulting. Our Aboriginal Programs branch does a lot of engagement with community and also the providers of those programs to get their perspective. So it's an amalgam of all of those things. We would call it oversight, monitoring, and assessment.

**The Hon. RACHEL MERTON:** In terms of recent oversight of such programs, are there any outcomes that can be discussed or—

**MONICA WOLF:** At the moment, part of the new monitoring and assessment framework is to report biennially to Parliament.

**The Hon. RACHEL MERTON:** To report?

**MONICA WOLF:** Yes. The last report we produced was in 2019. So the process since then has been really engaging with agencies to feed back what our monitoring and assessment has identified, but we are now moving to a regular reporting regime as well, on key OCHRE programs.

**PAUL MILLER:** Just on that point about reporting, as I mentioned, the function was established in 2014; 2019 was the first OCHRE report. At that time, the Ombudsman and Deputy Ombudsman essentially had a program of what was then a five-yearly, very significant, very important report; I think it had 69 recommendations or something like that. When I mentioned the framework we've developed, we're proposing to move away from that "once every five years here's a massive report" approach to much more regular reporting, but essentially slices of the Aboriginal Affairs portfolio rather than trying to bite off everything at once in one big report every five years.

**The Hon. RACHEL MERTON:** So if the last report was 2019, I'm just conscious that is close to five years. What do we know since 2019 about some of the oversight?

**MONICA WOLF:** The recommendations have been monitored since then, and there have been outcomes. For example, in the Aboriginal Prosperity Framework part of OCHRE there has been a fairly significant Aboriginal procurement strategy developed within Treasury, which has been a direct outcome from that review. So there has been, I guess, ongoing work with agencies, just not reported, which as Paul said, we're wanting to move back to regular reporting.

**The Hon. RACHEL MERTON:** So since 2019 would there be anything available in terms of oversight or outcomes?

**MONICA WOLF:** In our annual report, we report regularly on OCHRE outcomes and the levels of engagement and the outcomes from that work.

**Ms KAREN McKEOWN:** Thank you for your presentation. During your presentation you touched upon the automated decision-making functions and also AI per se. I'm really interested in what sort of risk frameworks you have around that, what controls, what stress testing you do, what reviews are in place. I know it's now the emerging technology of the day but it does need some very tight parameters around it. I'm just really interested in how you're doing that.

**PAUL MILLER:** I agree. In terms of our own use of AI, which is relevant—because certainly some of the new tools that are available are available to essentially all agencies, and I think different agencies are using them differently. I think we're one of the first agencies in New South Wales to adopt a generative AI policy, about the use, particularly the prohibited uses of tools such as ChatGPT, by our staff. That policy is on our website. We kind of promote it to the sector as an example, I suppose, that they might choose to develop, relevant to their situation. In terms of broader risk frameworks, at the moment our function is not to regulate this area for government. The government's AI Assurance Framework is developed by the Department of Customer Service, not by us.

What we have been doing: In 2021, we produced a significant report which was really focused on what we saw as a gap in some of those developing frameworks, which was looking at the intersection between the use of AI and the administrative law that governs and controls everything that government does. What we've been seeing is risk frameworks were being developed within government. They were very comprehensive in terms of data management, privacy controls, et cetera, but if they recognised an administrative law perspective at all, it was in a relatively superficial way. It was a kind of reminder to agencies that, of course you have to comply with the law, but very little guidance about what that means, in terms of those core principles of administrative law. That's what our 2021 report was intended to guide the sector about. Pleasingly, the Department of Customer Service has picked up some of that material and said that they will be incorporating it as they further develop their assurance framework going forward.

The second significant piece of work we did was the report we tabled on mapping the use of AI. One of the observations we made in 2021—and we're not unique in making this observation—is that there is very limited visibility about the use of AI by government agencies, local councils, and others, both in terms of proactive publication on websites et cetera, but also in terms of actual people being affected by decisions made with the support of AI. Generally speaking, there is no obligation on agencies in law to tell people that a decision has been made with the assistance of AI. That mapping work was really about providing a snapshot, and increasing the visibility of AI use in the sector. Chris Clayton was the executive sponsor for that mapping project. I don't know if you wanted to add.

**CHRIS CLAYTON:** Yes. Something that we're quite conscious of is that the public doesn't have a lot of visibility over the systems that are being used to make administrative decisions, so when they come to complain to us, they're not complaining about a system per se; they're complaining about an outcome, which may or may not have been affected by a system. The mapping project has been quite valuable, firstly, to increase the public's visibility over the types of systems that are in use or being developed but also, internally, as a capacity-building tool for our staff to be able to have some level of insight into the types of systems that agencies are using for decision-making.

If a member of the public comes and complains about a decision from a particular agency, they can have a look at our mapping report to see if there may be a system that has influenced the particular decision. It also allows us to have the conversation about the types of questions that we can ask members of the public when they're coming in to complain to us, but also to agencies, to try to establish whether particular systems have been used. We can then ask more specific and direct questions about how those systems have affected decision-making.

**Ms KAREN McKEOWN:** Have you seen an uptick in complaints regarding the AI decisions or the use of AI? Are you anticipating such? I note that local government, as a sector, is looking at using AI as a mechanism

for DA approvals, for instance. It's certainly in the pipeline to happen. Have you seen and are you anticipating an increase in complaints in those areas?

**PAUL MILLER:** I think it's fair to say we're anticipating an increase. I wouldn't say that we're feeling inundated at the moment by complaints about it. As Chris mentioned, one of the real challenges is that it's very rare that we would get a complaint that is framed in terms of AI. Sometimes it actually takes us a while, through the investigatory process, to even realise that there was an automated component to this. A good example is a case study in one of our reports, where we received a complaint about a cross-border driver licence issue. There was an issue about demerit points travelling across, et cetera. It was only after we started making inquiries, and it was quite technical, that we realised that the problem was the way that the Transport for NSW DRIVES system has coded a particular process.

For us, the biggest challenge that I foresee is not that we're going to get a lot of complains—we can handle a lot of complains; we receive a lot of complaints—it's that the way we are able to deal with these complaints may need to change. There's an inherent complexity associated with trying to investigate or interrogate an AI system, versus a particular decision-maker. With a decision-maker, you can effectively just say to them, "You made this decision. Why did you make it? What did you consider?" I could talk about this all day, so you can stop me at any time.

**Ms KAREN McKEOWN:** No, I am good.

**PAUL MILLER:** Even the report we tabled this week on Revenue NSW—the legal issue in that case was, in a sense, very simple and very narrow. But the complexity of investigating that—that report appends five legal advices and comes in the beginning of 2024, despite the fact that Revenue NSW had begun that system in 2016. For such a relatively simple system like that, for us to get our head around it presents those challenges. I think there is a lot of work that we—and not just us but other oversight bodies as well—need to do, to be able to deal with the complaints that will inevitably come.

**Mr TRI VO:** Thank you for attending today's hearing. We understand that the actionable complaints have increased by 5 per cent. There is also a 69 per cent increase in investigatory action and a 148 per cent increase in terms of custodial services. I understand that the increases were largely because of an increase in funding but, for the next years, do you think it will continue to increase? The second part of my question is: How are you managing the significant increase in staff numbers during the last two reporting periods?

**PAUL MILLER:** I will answer the first question first. In terms of overall complaint numbers, we are expecting them to continue to increase, but not dramatically. At the moment, we are tracking this year to have a small increase over the previous year. That said, complaint numbers, for various reasons, are not a particularly good metric of either what's happening in the world or, necessarily, our workload, because what matters more is the quality of those complaints, I suppose. The metric that is probably more important is the one you cite, in terms of the uptick in the number of complaints that we are taking investigatory action on, and that is the number that I want to see continue to increase. It is obviously important that we identify and investigate the right complaints—those that have merit—and don't spend time inefficiently dealing with complaints that don't warrant it.

But one of the improvements that we want to see from the increase in our staffing is that we are able to take action on more complaints than we have previously, both in terms of formal investigations and, perhaps more importantly, that kind of informal investigatory action that actually leads to a resolution of the complaints.

In terms of how we've dealt with the significant increase in staff, it has been a challenge; I won't deny that. In public sector world, the numbers are small, but for us they were very significant. We, over the last 18 months, would have onboarded at least 100 people, I would say. Pleasingly, I think one of the things that we recognised very early on was that, with a change of that magnitude for an organisation of our size, we couldn't approach that work in the same way that we would if we were onboarding 10 people or 20 people.

We approached it as, essentially, a project, and that meant doing things like ensuring that all of our hiring managers underwent training in proper hiring practices, to ensure that there was consistency across the board. We refreshed all of our onboarding modules, so that they became very efficient. As I mentioned in the opening, one thing that we tried to do was—with no intent to disparage the staff that we already had, we didn't necessarily want to take 100 of our current staff and duplicate them—use the opportunity to think about, how can we improve the diversity of our office, and where are the capability gaps in our existing office, so we are not just hiring people who are just like us.

Pleasingly, the results of that have been increases in some of our diversity metrics, in terms of the number of Aboriginal staff, number of staff with disability, et cetera. The biggest challenge, I would have to say, has been the amount of time that we probably didn't fully appreciate would be required of our existing staff to support the

recruitment of those 100 people. Obviously, sitting on recruitment panels is in itself a time-consuming process. But, more than that, their participation in the onboarding, the ongoing training, and getting people up to speed was probably something that we didn't factor in, which is why I pay tribute to our staff.

Coming out of COVID, which was obviously a very difficult and stressful period, I think the last two years, in particular, we layered additional stress on our staff, because what we've been saying to them is, "We want you to do what you've always been doing and, by the way, we've got additional funding so we need to do more than we've been doing previously. At the same time, we want you to onboard these 100 new people and make sure that we maintain the very positive ethical culture that we have." I think we've been successful, but I do think it's been a hard slog.

**Mr TRI VO:** How many staff do you have altogether?

**PAUL MILLER:** I think we're sitting at about a 240 headcount at the moment.

**Mr TRI VO:** Wow. That's a lot of increase. Have you received any complaints about the Independent Gaming and Liquor Authority or the Independent Casino Commission since the amendment began operating?

**PAUL MILLER:** I might have to take that question on notice, if I may.

**Ms KAREN McKEOWN:** You just touched on culture, with such a significant change within your area. Did you do a specific piece around culture and what you would do to embed that throughout your area?

**PAUL MILLER:** What we did was we essentially started at the top with the executive team, and then flowed through the management team. One of the approaches that we've taken is, where we've been conferred a new function which requires us to stand up a new team—for the example of the Whistleblower Support unit, we've not previously had a Whistleblower Support unit. One of the ways that we've managed the cultural piece—I think there are four or five positions in that unit—even though we've been given the funding for five roles, is to stage the recruitment process, so that what we do is we recruit the manager first.

We work with the manager very intensely on a one-on-one basis, in terms of what we want both this unit to do and also what we want this unit to be, and how we want it to operate with the rest of our organisation. I think that's probably been the most important cultural strategy that we have adopted. It's particularly important for us because, in some ways, the way our functions are conferred means that it's very easy to see an office like ours potentially become siloed. You can have a Whistleblower Support unit, which has its own culture and ways of doing things, and you've also got an Aboriginal Programs unit. One of the perennial challenges is, how do you ensure that there is a coherent and positive culture across all of those groups?

**The ACTING CHAIR:** I just wanted to turn to the Optional Protocol to the Convention Against Torture [OPCAT]. I just wanted to see if you can give us an update as to where we are at. Firstly, is the NSW Ombudsman designated as the national preventative mechanism for this State?

**PAUL MILLER:** I wish I could give you an update. I really do. I resisted saying anything in my opening statement about this. No, I can't give you an update. Ultimately, it's a question for government as to when it will implement the obligations under OPCAT.

**The ACTING CHAIR:** Wasn't the deadline 20 January 2023?

**PAUL MILLER:** That's correct, and that was already—I think it ended up being a five-year extension. So that was the absolute cut-off for Australian jurisdictions to implement OPCAT. We have not received any further update from government on the implementation of OPCAT. The last—

**The ACTING CHAIR:** If there was no update, what was the cause of the \$164,835 spent with Deloitte to prepare for this?

**PAUL MILLER:** We have, ready to go, our operating model, so that we can participate in the OPCAT regime. The reason we did that work—ironically, given where we are now—is that we saw the looming deadline. We continued to approach government, seeking an update on whether and to what extent we would be designated as an oversight body under OPCAT. My biggest concern at that time was that, with the deadline, an announcement would be made, the function would be conferred on us, and we would fail from day one to be able to implement that function.

**The ACTING CHAIR:** Are you ready to implement it now if it's designated?

**PAUL MILLER:** We are ready to be conferred the function, yes. We are also ready—OPCAT covers a range of facilities, or should cover a range of facilities, in the state. The most obvious one where we would have a role is in relation to detention and custody. There's an Inspector of Custodial Services at present, so there are

questions about, potentially, joint designation, or otherwise. There are different options for designation. Some jurisdictions designate one body to be the NPM. Others have nominated one body, such as the Commonwealth Ombudsman, to be the coordinating NPM, and then to have other agencies be sector-specific NPMs. Whatever model is adopted, we've tried to build a framework for ourselves, so that we will be ready, whatever role we're given in that regime.

**The ACTING CHAIR:** I think that's all the questions so thank you for appearing before the Committee today. You'll each be provided with a copy of the transcript of today's proceedings for corrections. The Committee staff also will email any questions taken on notice from today and any supplementary questions from the Committee. We kindly ask that you return these answers within seven business days.

**(The witnesses withdrew.)**

**Ms HELEN WODAK**, Deputy Ombudsman, Monitoring and Review, Child Death Review Team, affirmed and examined

**Mr PAUL MILLER, PSM**, Ombudsman and Convenor, Child Death Review Team, reaffirmed and examined

**The ACTING CHAIR:** I now welcome representatives from the Child Death Review Team. Please note that the Chair of the Committee, Mr Philip Donato, is an apology today. I am chairing proceedings as the Acting Chair of the Committee. Also, please note that Committee staff will be taking photos and videos during the hearing. These photos and videos may be used for social media purposes on the Legislative Assembly social media pages. Please inform the Committee staff if you object to having photos and videos taken. Before we proceed, do you have any questions about the hearing process?

**PAUL MILLER:** No.

**HELEN WODAK:** No.

**The ACTING CHAIR:** Would either of you like to make a short opening statement before we move to questions?

**PAUL MILLER:** Yes. I will, thank you. I'd firstly like to take the opportunity to acknowledge all members of the Child Death Review Team and extend my thanks to each of them for their ongoing contribution to this important work. As the Committee would be aware, the CDRT is a team of independent experts and senior level agency representatives. Each member brings special expertise and experience to the table, as well as a strong commitment to the overall goal of the team, which is, of course, to prevent and reduce the likelihood of death of children in New South Wales. Members of the CDRT have important day jobs, whether that is paediatric surgeon, general practitioner, Commander of the Police Homicide Squad, or Chief Forensic Pathologist. Their willingness to share their time and expertise on bringing a multidisciplinary focus to issues concerning all deaths of children in New South Wales is extremely valuable.

I will quickly outline some of the activities of the CDRT since our last appearance in late 2022, and some information by way of update. Since our last appearance, the CDRT has tabled two annual reports, 2021-22, and 2022-23. These reports describe the various activities of the team over the two financial years. The 2022-23 report also includes information about the team's inaugural annual member survey, research activities in the period, and other reporting as required by legislation. They also include detailed information about agency progress in implementing CDRT recommendations. We actively monitor and follow up with agencies about recommendations, and the annual report is an important part of keeping agencies accountable for their commitments. We will table the next annual report for 2023-24 in October this year.

In November 2023 we tabled the CDRT's biennial report of the deaths of children in 2020-21. This is the major work of the team that is published every two years; 950 infants and children aged zero to 17 died in that two-year period in New South Wales. This report examines all of those deaths. It also reports on trends over a longer 15-year time span. Firstly, and consistent with previous years, it is the case that most children who die in New South Wales die from natural causes. This is nearly three quarters, or 679, of those 950. Of those who died of natural causes, 486, or 72 per cent, were infants aged less than 12 months. In most cases, these infants died during the first four weeks of life from causes associated with perinatal conditions, including prematurity, and congenital abnormalities or disorders. To categorise a death as due to natural causes does not, of course, mean that the death might not also be preventable. Given the prevalence of natural-cause death, much focus of the CDRT over the years has been on ways to reduce the likelihood of such deaths, even while recognising that it will never be possible to eliminate.

Pleasingly, overall infant and child death rates in New South Wales are generally continuing to decline. Over the 15-year period from 2007 to 2021, infant mortality decreased by more than a quarter, 28 per cent; and for children aged one to 17 it declined by just under a quarter, 24 per cent. However, declines in mortality are not uniform. Certain groups of infants and children continue to be overrepresented in deaths in New South Wales, including males, Aboriginal and Torres Strait Islander children, those living in regional and remote areas of the state, those from the most disadvantaged areas, young people aged 15 to 17, and children from families with a child protection history.

Of particular concern, and unlike other causes of death, the rate of suicide among children and young people aged 10 to 17 years in New South Wales increased by 68 per cent over the past 15 years. That said, much of that increase occurred in the first 10 years of this 15-year period, and the rate of suicide of children and young people appears to have remained relatively stable over the last five years. Nevertheless, in 2020 and 2021, suicide was the leading cause of death for those aged 10 to 17. The highest number of suicide deaths among children and

young people sits within a wider context of increasing hospitalisations due to intentional self-harm. The CDRT is actively working to try to understand the predominant factors driving this trend.

In its biennial report, the team analyses and reports on trends and patterns about a range of demographic characteristics, including Indigenous status, across all causes of death. As I noted earlier, Aboriginal children continue to be overrepresented in deaths across both natural and external causes among both infants and children. However, there appears to have been some narrowing of the gap in rates between Aboriginal and non-Indigenous infants in 2020-21. Unfortunately, that positive news did not extend to children aged one to 17. Of particular concern in 2020-21, the rate for injury-related death remains 3.9 times higher for Aboriginal children aged one to 17 than for non-Indigenous children, with no improvement over the 15 years. The higher rates are associated with deaths by suicide, in transport incidents, and due to other unintentional injuries.

The CDRT's current major research project is the Aboriginal and Torres Strait Islander suicide project. Our work has consistently shown that Aboriginal children and young people are overrepresented in suicide deaths. The primary aim of this project is to identify opportunities for preventing and reducing the likelihood of future suicide death. The project team is led by Aboriginal members of the CDRT who are acting as project sponsors, overseeing key findings and outcomes. We have engaged the Ngarruwan Ngadju First Peoples Health and Wellbeing Research Centre to conduct the research. It has an estimated completion date of mid-2024, after which the CDRT will prepare and table a public report on the research.

The CDRT finalised two other research reports since our last appearance before the Committee. The first was a project linking data on social determinants and early childhood mortality. That report, which was commissioned from the Australian Institute of Health and Welfare, was entitled *Effects of perinatal conditions and local area socioeconomic status on early childhood mortality in NSW: linked data analysis*, and was tabled in December 2022. The second research project was a preliminary study on *Infant deaths from severe perinatal brain injury in NSW, 2016-2019: key thematic observations*, the results of which were included as an annexure in our biennial report.

We are currently developing a research framework to guide future research conducted by the CDRT. It is informed by a review of the team's charter and current strategic priorities, consideration of research guidelines from other jurisdictions, and lessons learned from previous research projects. That research framework will be published on our website once it is finalised. Helen Wodak leads the NSW Ombudsman's Death Review staff that support the CDRT. I have already expressed my thanks to the members of the CDRT. I would like to add my thanks here to my own staff, who support and provide much of the heavy lifting for the CDRT's functions, including by reviewing and coding deaths, maintaining the state's register of child deaths, undertaking and commissioning research and analysis and, of course, in preparing the reports of the team. They do an excellent job, often dealing with difficult and sometimes confronting issues. But it is also a very important and rewarding job, when it can lead to changes that will prevent death in the future. Helen and I would be happy to expand on any points I've mentioned or to answer any other questions you might have.

**Mr TRI VO:** Thank you for being here at the hearing. You mentioned that Aboriginal and Torres Strait Islander children and young people are significantly over-represented in suicide deaths of young people aged 10 to 17. In 2020-2021 there were approximately eight deaths per 100,000 Indigenous 10- to 17-year-olds compared to approximately three deaths per 100,000 non-Indigenous 10- to 17-year-olds—which is quite similar to what you said before. The Aboriginal and Torres Strait Islander young people are about three times the non-Indigenous. Could you provide an update on the project to review suicide deaths of Aboriginal children and young people? I understand that you also mentioned that the project is undertaken by the Ngarruwan Ngadju First Peoples health and wellbeing research centre. How has this partnership developed, and do you have any comments on the process of it?

**PAUL MILLER:** Thank you. I might hand to Helen to answer that question.

**HELEN WODAK:** The project's at its final stages. It's due to be completed by 30 June. There are various components of the project. There have been reviews conducted of the deaths of Aboriginal children and young people over a 10-year period, and key findings from that will be part of that. There's been a literature review. There's also been a service-mapping exercise. The other thing that the researchers have spent the last 12 months doing is community and stakeholder consultation across New South Wales to augment the findings from both the service mapping, the literature review, and the key findings from the reviews that were conducted.

As well as the other components of the research that Paul has mentioned, there's also a First Nations Advisory Committee for this project, and that is also part of the oversight arrangements for the project. Professor Kathleen Clapham, who is a member of the Child Death Review Team, is leading the project. She is the director at Ngarruwan Ngadju First Nations Health and Wellbeing Research Centre at University of Wollongong and

there's other First Nations researchers who are involved in completing the research findings. The project will be a series of reports to the Child Death Review Team and, as Paul mentioned, we will be then tabling public reports following receiving those reports in the middle of the year.

**Mr TRI VO:** Once the reports have been completed, what actions are we going to take to try to reduce the deaths of young Indigenous people in our society?

**HELEN WODAK:** We anticipate the reports will contain recommendations to parts of government. Those recommendations are in the early stages of being drafted by the researchers. They're doing some broad consultation about some of the themes, in relation to those recommendations. Part of our role, in terms of supporting the CDRT, is to then monitor those recommendations, both to engage with whoever the recommendations are made to—as to whether or not the recommendations are accepted—but also to continue to monitor those. We report publicly on the outcome of that monitoring in the CDRT's annual report.

**The ACTING CHAIR:** Just before I move to Ms McKeown, I omitted earlier to remind you as witnesses that you may wish to take a question on notice and provide the Committee with an answer in writing within seven business days after receiving those questions.

**Ms KAREN McKEOWN:** Do you have any information or is there any data coming through—maybe from the research—about what role cyberbullying, trolling, harassment is playing in terms of youth suicide numbers? Is that something that you're in a position to comment on? Are there any trends coming through on that at this stage?

**PAUL MILLER:** I'll hand over to Helen in a moment. One of the things that we try to do is to identify issues like that, where they're present in a particular death. One thing that we're quite cautious about, though, is that even though the number of suicides is alarming, it's also statistically a very small number. It's very difficult, unless you do a project such as the project we're doing on Aboriginal suicide, where we're looking at a 10-year period, to get—if I can put it crudely—a statistically relevant sample.

One of the things that we identified in the most recent biannual report was not the social media issue, but two things, really. One is the significantly greater increase in suicide among young female people, as well as young males. Both have been increasing, but the rate has been increasing for females and males to the point where, in the last reported year, the rate was the same. The other one was the presence in a number of those suicide deaths of eating disorders prior to the event. But I don't think I can add anything, in terms of broader observations about social media and bullying et cetera, without having done a research-focused project.

**HELEN WODAK:** We do look at various proximal causes in relation to all of our suicide reviews, and one of those does include bullying. So that's something that we regularly report on—whether or not it was observed in relation to the reviews that were conducted in that reporting period. In terms of the work that we're doing currently, in relation to the reviews that are currently conducted, one of the things that we do look for is the mediums that were used, in relation to any bullying that was observed, but taking Paul's point that obviously it's a fairly small sample size.

**Mr MARK TAYLOR:** Thanks, Convenor, for your opening lines. Mr Vo raised some questions around your recommendations, outcomes and findings and how they're then passed on to the agency. There was a comment about them being monitored. Are there any incentives, or how do you go about incentivising those agencies to take up your recommendations? How do you encourage them to have a look at your findings and outcomes?

**PAUL MILLER:** It's a good question. The first answer, I suppose—and it applies to all recommendations that an Ombudsman makes, in the sense that our recommendations are not binding—is that the key is the persuasiveness of the recommendation, and the argument for why it should be implemented. What we want is for agencies to implement our recommendations because they understand our analysis, they see the reason for it, and they want to do it. That's probably the first answer. The second point is that most agencies, I think it is fair to say, are very responsive and respectful of—particularly with the CDRT—the expertise of the CDRT, and take the recommendations seriously. I think most of our recommendations are accepted.

There are occasions where agencies will come back to us and say, "We understand why you've made this recommendation, but we think there's a better way of achieving what you want us to achieve." In that regard, one of the things that we've implemented recently is a process of engaging more directly—and by that I mean in face-to-face meetings with agencies—before we finalise a recommendation, to outline to them the analysis that leads us to think that something needs to be done, our rationale for why we think this recommendation is appropriate, and what we're hoping to achieve from it, so that they have an opportunity to fully understand the

recommendation itself, but also to provide feedback if there is some practical or other reason why a slightly different or clearer approach would be necessary. Do you want to add anything to that, Helen?

**HELEN WODAK:** I might just add that, in terms of the monitoring of the recommendations, we have a very proactive engagement process with agencies in relation to that. So we both communicate formally—I mean through formal correspondence with agencies—to say what's happened, but we also meet with agencies. Where there's been challenges for agencies, in relation to responding to the recommendations, we proactively respond to what those challenges might be, in terms of supporting it in whatever mechanism might be available to us. In the past there's been times where a recommendation hasn't initially been accepted, but through that process of engagement, support, and meetings, and providing additional explanations and rationale, agencies have ultimately accepted the recommendation, and then we've continued to monitor it. I think that proactive engagement is very key to the success of the recommendations.

**Mr MARK TAYLOR:** Is there a particular legislative hurdle or a framework issue with swimming pool safety compliance data that you're aware of?

**HELEN WODAK:** Yes, there is. There's a number of complexities in relation to that particular recommendation, and obtaining that data. We monitored that particular recommendation for some time, waiting for the register's various incarnations to be implemented. Ultimately, the particular data that is collected within that regime wouldn't allow us to comment comprehensively on swimming pool compliance, in terms of whether or not the issues that, ultimately, we were trying to address had actually been addressed. We're considering other opportunities to try and investigate that issue further.

**The Hon. RACHEL MERTON:** If I could just touch back on the suicide rate. Mr Miller, in your opening comments you were talking about a 68 per cent increase in recorded suicide in terms of 10- to 16-year-olds. I'm wondering if, just to ensure that I've got that accurate, you might be able to detail what that finding was?

**PAUL MILLER:** Yes, 10- to 17-year-olds and, yes, 68 per cent—it's in the biennial report. The most relevant chart is figure 58 of the biennial report, which tracks the yearly rate. It also shows the point I made in the opening, which is that most of that increase occurred in the first 10 years of that 15-year period, and the five years to 2021 has been relatively stable. But over the full 15 years, that's correct—68 per cent.

**The Hon. RACHEL MERTON:** If I could look at targeted prevention measures relating to suicide. I understand the annual report touches on this, relating to NSW Health's ability to provide adequate support to young people at high risk of suicide and the targeted prevention measures identifying those young people that are difficult to engage. Are you able to provide an update on some of the findings relevant to this issue in terms of targeted prevention measures and NSW Health?

**HELEN WODAK:** As I understand it, that particular component of the recommendation is still open. We continue to monitor that. What that means is that we haven't been satisfied, to date, that the recommendation has been fully implemented, so we will be seeking an update from NSW Health, and reporting on the sustained intensive therapeutic support to young people at high risk in our annual report in October.

**The Hon. RACHEL MERTON:** So that is in progress?

**HELEN WODAK:** Yes.

**The Hon. RACHEL MERTON:** There is another issue in terms of identification of illness in infants. Are you able to provide an update on the monitoring of recommendations about ensuring access to information about identifying illness in infants in terms of information and parents?

**HELEN WODAK:** In a similar vein, that recommendation is still open, so we will be monitoring that, again with NSW Health. There was a range of initiatives that were underway when we engaged with NSW Health and we reported on those, but we wanted further information in relation to that particular aspect of identification. We're particularly concerned about hard-to-reach groups. That's an area that we're continuing to focus on, in terms of our engagement with NSW Health.

**Ms KAREN McKEOWN:** Have you commenced any work to incentivise agencies to act on the CDRT recommendations at all?

**PAUL MILLER:** Not to incentivise. As I mentioned earlier, we certainly encourage agencies to do so. As Helen's outlined, the process of monitoring recommendations in this space is very rigorous, very transparent, and quite formal, as well as informal, but there is a very formal process for doing that. At the end of the day our only stick, if you like, is that public transparency. I must say the area of frustration, which is common, I suppose,

to all oversight bodies like ours, is not so much that agencies don't take up our recommendations; it's the speed with which we see them implemented.

I think there is an element of agencies running a big system, and we make recommendations that are asking them to tweak this particular element of a system. We don't necessarily have appreciation of what other things they have going on, how changing here will affect somewhere else. I need to be open-minded, I suppose, about the reality of the speed it takes to implement recommendations but, at the end of the day, as I said we try to be as persuasive as possible to work with agencies, so they understand our recommendations and that it is, frankly, in their interest to implement them.

**The ACTING CHAIR:** I think those are the only questions from the Committee, so thank you very much, both of you, for appearing before the Committee today. You'll each be provided with a copy of the transcript of today's proceedings for corrections. The Committee staff will also email any questions taken on notice from today and any supplementary questions from the Committee. We kindly ask that you return those answers to the Committee within seven business days.

**(The witnesses withdrew.)**

**(Luncheon adjournment)**

**Ms ANINA JOHNSON**, Commissioner, Law Enforcement Conduct Commission, affirmed and examined

**Mr PETER JOHNSON, SC**, Chief Commissioner, Law Enforcement Conduct Commission, sworn and examined

**Ms CHRISTINA ANDERSON**, Chief Executive Officer, Law Enforcement Conduct Commission, affirmed and examined

**The ACTING CHAIR:** Good afternoon. I welcome our next panel of witnesses, representatives of the Law Enforcement Conduct Commission. Thank you for appearing before the Committee today. Please note that the Chair of the Committee, Mr Phil Donato, is an apology and I am chairing the proceedings as the Deputy Chair of the Committee. Also note that Committee staff will be taking photographs and videos during the hearing. The photos and videos may be used on the New South Wales Legislative Assembly social media pages. Please inform Committee staff if you object to having photos and videos taken. Before we proceed, do you have any questions about the hearing process?

**PETER JOHNSON:** No, thank you, Mr Chair.

**The ACTING CHAIR:** Would anybody like to make an opening statement before we go to questions?

**PETER JOHNSON:** Yes, if I could. We are pleased to appear before you today. We acknowledge that this Committee plays an important role in the oversight of the Commission in the exercise of its important statutory functions. The Executive Director of Operations for the Commission, Gary Kirkpatrick, is on leave and he sends his apology for today. The work of the Commission between July 2022 and June 2023 is addressed in the annual report, which is available to you. I want to highlight some of the topics mentioned in that annual report shortly, and some of the more recent work of the Commission.

In the last year the Commission has tabled a number of reports, including in May 2023, a report entitled *Five Years of Independent Monitoring of NSW Police Force Critical Incident Investigations*; in June 2023, a report assessing the Police Force responses to domestic and family violence incidents; in September 2023, a report reviewing a sample of stripsearch records 2021-22 of the NSW Police Force; and in October 2023, the final report in Operation Tepito, an investigation into the use of the Suspect Targeting Management Plan on children and young people by the NSW Police Force. That investigation ultimately led the police force to discontinue the use of STMP for young people, shortly prior to the issue of the report.

In December 2023 the Commission tabled the Operation Mantus report, which dealt with the alleged excessive use of force by police on a young person, and issues concerning police interviews of vulnerable young persons in custody. That report made recommendations concerning the provision of legal advice to young persons in custody prior to a police interview, the management of young persons in custody, and the use of body-worn video by operational plain-clothes police. In the financial year 2022-23, the Commission has assessed 4,703 complaints, and oversighted 2,129 police investigations. It began oversighting 45 new critical incidents, including attending many of those critical incidents, and oversighting those police investigations. The Commission also had 56 independent investigations underway. Our figures for the current financial year are on track to be similar to those figures from the last financial year.

The Commission has launched a number of initiatives in recent times: the publication by the Commission of guidelines on the use of pseudonyms and non-publication orders in Commission reports; next, a new strategic plan—2023-26—for the Commission; next, our first Reconciliation Action Plan for the period October 2023 to October 2024. One of the many positive results in this area has been that we have two new First Nations staff, who have joined us as engagement officers and are making valuable contributions to the work of the Commission. Next is development of a strategic intelligence function; next, in February 2024, the issue of the Community Engagement Strategy of the Commission. We engaged with the Hunter community in November 2023, and will undertake further events, in Wagga Wagga this month, and in northern New South Wales in June.

The Commission is currently working on three matters that I wanted to highlight, and these are merely by way of example. The first is Operation Harrisdale. This is an investigation by the Commission, arising out of a motor vehicle accident with a senior police officer in the NorthConnex tunnel in May 2023. The Commission was well aware of that matter and was oversighting the police investigation, prior to receiving a complaint from the Commissioner of Police with respect to this matter, in November 2023. The Commission has conducted 17 private examinations over 11 sitting days. The preparation of a report is significantly advanced. We anticipate tabling a public report in due course.

The second issue that I wish to raise is now the subject of proceedings before the Court of Appeal. Those proceedings deal with the issue of access to information and materials which are part of the Commission's oversight function concerning police critical incidents. Since about September 2023, the police have objected to providing some materials, on the basis that they are subject to public interest immunity. On 28 February 2024, the Commission issued a decision on that objection. The police filed proceedings in the Court of Appeal on 6 March 2024, challenging that decision. Those proceedings are listed for hearing before the Court of Appeal next Thursday 9 May 2024.

Thirdly, the Commission proposes to publish an issues paper later this month on bail compliance checks in New South Wales. That paper will consider, in particular, the police practice of undertaking residential curfew checks in the absence of a bail enforcement condition granted under section 30 of the Bail Act 2013. There will be an opportunity for stakeholders to respond to a series of questions canvassed in the paper, and those submissions or responses will inform the Commission's final public report on that topic. Of course, we will ensure that the issues paper is provided to those undertaking any wider review of the bail laws in New South Wales, which, we understand, may be the case.

This is not an exhaustive list of some of the work which the Commission has done in the last year or currently. But it does show, I hope, the range of work being undertaken by the Commission in areas which have attracted a degree of appropriate public scrutiny. Before concluding, I would like to extend an invitation to all members of the Committee to visit the premises of the Commission, to assist you in understanding the work of the commission. We are not far away, in the St James Centre at 111 Elizabeth Street, Sydney. We look forward to working with the Committee during the parliamentary term in its important work, and we'll do our best to answer any questions that you have for us today. Thank you.

**The ACTING CHAIR:** Thank you. Does anybody else want to make an opening statement?

**ANINA JOHNSON:** No.

**The ACTING CHAIR:** Thank you for that and thank you for that kind invitation to visit the premises of the Commission. Before we begin the questions, I will inform you that you may wish to take a question on notice and provide the Committee with an answer in writing within seven business days after receiving the questions. That's the time frame for that. I might start with some questions that I had about critical incident investigations. I note in the annual report you've identified that you have some difficulty where there seems to be a blanket decision by police to decline consent to participate in critical incident interviews. What's the purpose of that in terms of your oversight function? Why is it important or crucial for you to be there during those interviews?

**PETER JOHNSON:** It would be helpful to have that opportunity. I can't say, however, that it's crucial. The interview takes place if we're not there. We will, at a later time, usually have access to a transcript of the interview, even though we wouldn't be present at the interview. That's my understanding of the way it works. However, insofar as the statute provides for an opportunity for an officer of the Commission to be present with the consent of the parties, it's simply a circumstance that has never come to pass, because no-one has ever consented to it, and so it's in the statute, and it has never had any work to do, because there has always been an objection. But I cannot say to you that that has been a major obstruction to the work of the Commission in oversighting a critical incident investigation.

**The ACTING CHAIR:** Does it make your work more difficult because you're, for example, waiting for that transcript before you follow other lines of inquiry?

**PETER JOHNSON:** There is an issue of delay. As we see the process, we're meant to have direct access for the purpose of our function of oversighting critical incident investigations—the statutory scheme, at least as we understand it, and subject to the court decision next week, and I won't go into that of course. We are meant to have a direct line of sight into relevant matters for the purpose of the investigation; we're the eyes and the ears of the community. And so the best way of doing it would be for us to be present to hear, at the same time as investigators, what the officer says, rather than relying upon after the event summaries for a period until we may get to see the transcript.

There is a delay, at least, and that doesn't seem to us to be consistent with the statutory scheme, where we're meant to have direct access to this material, even though we cannot investigate it, of course. The statutory scheme says we cannot investigate it. But what the statutory scheme does, as we see it, is it puts us in the position where we can observe the investigation, ask questions, make suggestions, et cetera along the way. Without being present at the interview, that process is at least delayed.

**The ACTING CHAIR:** To be clear, you're not participating in any way. You're not asking any questions.

**PETER JOHNSON:** No.

**The ACTING CHAIR:** You're just sitting there observing.

**PETER JOHNSON:** That's exactly right.

**The ACTING CHAIR:** Why would anybody have a difficulty with that?

**PETER JOHNSON:** That perhaps is a question that others would need to answer but we understand, and perhaps my understanding is, that this is an approach taken, the advice given to officers, I understand, from the Police Association. I'm not being critical of them; they have a function. But that's the standard advice and thus the standard response from officers. I'm not suggesting that the refusal to have us present gives rise to any adverse inference for the officer, but it does mean that we don't have ready access to what is quite important information to have in a timely fashion.

**Mr MARK TAYLOR:** Can I just go to consorting laws. I understand there have been some reviews of those consorting laws over the years and recommendations made. What's the Commission's current position regarding consorting laws and the recommendations that may have been put forward to the Police Force over those years?

**PETER JOHNSON:** There has been a report by the Commission on consorting laws with particular emphasis on young persons, and the recommendation in the report of the Commission was that it, in effect, be stopped with respect to persons under the age of 18 years. The Commission's report, as I recall it, indicated that there had been very few examples, in any event, of the consorting law being used on, certainly, young minors. But our recommendation, which was one directed in fact to the Attorney General and not to the police, was that the statute should be changed.

It's fair to say that the process of the investigation by the Commission meant that there was a close look at what was happening on the part of police. There have been improvements in the way the police have approached consorting law, but I'm speaking effectively from the position of persons under the age of 18 years, rather than adults who may be subject to the consorting laws. There may be very good reasons for those laws to be used regularly for adults, but our concern was always with persons under the age of 18.

**ANINA JOHNSON:** I think there was some variation in the way in which the consorting laws were used. We certainly recommended that in certain circumstances, particularly where they're used for members of organised motorcycle gangs, for example. We could see very good strategic uses for those consorting laws in other instances where the laws were used. I think there was an example given of people being asked to move on after they'd come out of a methadone clinic, and there were two people sitting and having a cup of coffee together. Perhaps that wasn't the kind of serious consorting that those laws had been directed to. As the Chief Commissioner said, there were recommendations made to the Attorney General for suggesting some changes for those.

**PETER JOHNSON:** I've been reminded of page 81 of our annual report for 2022-23, which speaks of the report of the Commission, what was found and recommendations made. It was observed that the NSW Police Force accepted and supported eight of the recommendations that had been made and we were waiting with respect to some other recommendations. I point to that in further answer to the question.

**The Hon. RACHEL MERTON:** Thank you very much for being here today and participating. Mr Johnson, you were making reference about bail laws and the current debate and discussion here relating to domestic violence. I was wondering whether you might have been able to speak a little bit further about that in terms of the role that you guys play in this.

**PETER JOHNSON:** I should make clear that the work that has been done by the Commission, which will be in the issues paper that will come out later in the month, is dealing with a particular topic. It's not dealing with bail generally; it's dealing with the circumstances where there's a curfew condition, and the way in which police approach curfew checks, in particular in circumstances where there's no statutory bail enforcement condition. That is a controversial topic. In fact, there was an indication earlier this week that there's a Supreme Court case that has just been commenced on that topic. That, however, is a fairly narrow issue. We weren't looking at bail laws generally. We are very conscious of the discussion going on right now. I can look back on my own experience as a judge and how the bail laws worked. I am, of course, past that point and I don't have to apply the Bail Act. But we are not looking generally at bail laws.

If there are complaints about the way the bail laws have applied, we would come to look at them in that way. We have not been asked at this point to express any submission or view. I can well understand, though, from public discussion, that there are many aspects of the bail laws and other aspects of the criminal justice system that are under discussion. If the government wished for us to make any contribution on those issues, we are certainly

able to assist, as we are on any issue where policing is involved, and our other functions associated with policing are involved. But we have not been asked so far. Beyond that, it would probably just be me with my own idiosyncratic views based on my past experience, which I don't think is why I'm here today, so I don't think I can assist further on that aspect.

**The Hon. RACHEL MERTON:** No, thank you. I appreciate that. Could I touch on another issue—the same issue really—the domestic and family violence one? In June 2023 the Commission tabled the *Review of the NSW Police Force responses to domestic and family violence incidents* and, in the review, statistics and processes involving police officers being investigated for domestic or family violence offences was explored. I am just wondering if there might have been any reflections on some of these findings concerning the number of offending police officers.

**PETER JOHNSON:** We could indicate some figures which show the number of complaints we have had since 1 July 2023, which is an update, effectively, of what was in that report. But before going to those, we observed in that report, amongst other things, that there were areas of significant improvement needed in the way in which police investigated domestic violence. It always has been challenging; it remains challenging. And now there is a very wide and important public discussion about that very fact. The issue of police officers who themselves are charged with a domestic violence offence is, of course, a starker problem. One of the recommendations we made in that report is that, where there was such an investigation underway, police from a different command would undertake the investigation, so it would not be officers from the same command involved. The police don't accept that as a blanket position, although they say they think about it each time, and they will decide whether that's an appropriate thing to do in the circumstances of the case.

Could I move then to the figures we have? Since 1 July 2023 the Commission has received 713 new complaints related to domestic violence. Of those, 260 complaints were made direct to our Commission, and 453 were made to the police. As you understand it, there are two pathways to us. People can make a complaint direct to us. If they make a complaint direct to the police, we get to see it if it's a notifiable complaint, as these certainly would be. So we have a line of sight into both types of complaints. Of the 713 complaints since 1 July 2023, 68 involved an officer as an alleged perpetrator. Of the complaints that came to us, most of the allegations raised issues as to whether the police had properly investigated the domestic violence incident.

Just by way of a general observation, our dealings with the police, including with the Commissioner of Police, is that there is a very serious and determined approach being taken to domestic violence. The Commissioner of Police has made that clear publicly and to the Commission. There are, nevertheless, ongoing challenges, and challenges in the way in which police come to investigate these matters. There appears to be some determination on the part of the police to improve things in that respect, and I'm sure the current public discussion will provide a further incentive to the police, if it was needed, to improve in any way possible their approach to investigating allegations of domestic violence, including against serving police officers. I hope that's of some assistance.

**Mr TRI VO:** Thank you for attending the hearing today. Mental health is a big issue these days. Can you provide more detail about your concerns regarding the lack of training available to ensure that police interact and respond appropriately to people experiencing mental illness? Is there a role that the Law Enforcement Conduct Commission can play?

**PETER JOHNSON:** It is a matter which the Commission has had significant involvement in. If I could ask the Commissioner to answer, she has a background in forensic medicine, if I could put it that way—at least as a lawyer. She has a special interest in the way in which the Commission deals with issues of mental health, both in the way in which police deal with persons with mental health problems, but also more generally. If I could, I'll pass to the Commissioner to answer.

**ANINA JOHNSON:** There are a couple of things from that. Firstly, we understand—and I think it has been in the public domain—that the New South Wales Police are, themselves, conducting a significant review about the way in which police respond to people experiencing mental distress or mental health issues. We have certainly had some high-level briefings from them about the way in which that review has unfolded, and some of the potential recommendations. We have also had the opportunity to have some input and they have been, I think, fairly frank with us in the conversations that we have had. We welcome that.

Our concerns, in terms of training, are that the training itself that had been in place—which was training that was, at one point, over four days, then over two days, then over one day—had not been being rolled out for a period of time. That led to significant gaps in training. Our understanding from the police is that that's changing, now that there has been a review of the mental health training that's to be provided to officers, and that there is now a suite of different training options that are going to be rolled out, with intensive training, both at the academy,

training as part of officers' reaccreditation, in terms of firearms use and use of force generally, as well as online and face-to-face training for all police officers every year. The police would be able to provide you with more information about that.

We think there are two things. Firstly, regular updated training, and, secondly, that training needs to take a different approach, to emphasise that police should respond differently to people in mental distress to the way in which they would respond to someone that they consider to perhaps be engaged in crime or some other kind of public disorder. People in mental distress need the opportunity to be responded to calmly, to de-escalate, and to give them the opportunity to have much more verbal interactions, and those kinds of calming interactions, than the command and control model, which is used by police in other circumstances for understandable reasons.

The second issue that police are very aware of, and which has also been the subject of some discussion, is the critical importance of Health as a participant in responding to people in mental distress. No amount of training will make police officers into clinicians. That's unrealistic and it's not part of their role. We understand that that's something that police are discussing with government, in terms of how Health might come to be more actively involved in police responses to people in mental distress. That being said, training will remain fundamental because we think, in a state as big and diverse as New South Wales, there will always be times when police are first on scene. What is important is that the person in mental distress remains unharmed and alive to then be engaged with by Health people when they are able to arrive.

**Mr TRI VO:** Can you please comment on the effectiveness of the new arrangement for the NSW Police Force to provide electronic material to the commission? I understand that the police notified the commission but it did not believe the commission has the legislative powers to request videos under section 41 of the LECC Act. Do you agree? Do you think there needs to be legislative change to the Police Act?

**PETER JOHNSON:** As I understand the question, it's dealing with the circumstances in which the police will provide electronic evidence, such as body-worn video, to the Commission, for the purpose of our assessment and investigation processes. After we were appointed as the Commissioners, and commenced in the middle of 2022, there was, for a period of time, some debate with the police about getting ready access to the body-worn videos. There was a considerable delay. We would have to look at things and then decide did we want it, write to them and they would—some weeks later—send us the body-worn video. The Commission took the view that this was highly inefficient. There were delays which were not fair on complainants—or police officers, for that matter, who were under some challenge. It was also administratively highly inefficient because there was double handling—if not triple handling—at the Commission end, and then no doubt the same at the police end.

There was quite a lengthy period of discussion with the police, until we reached an agreement in the latter part of last year—around September, I think, August-September—whereby we could indicate what we wanted, and they would make it available promptly to us. Much more quickly. That's been done under the current legislative scheme. When we had the discussion before that practice commenced, there wasn't the suggestion, as I recall, that there was a legislative problem with it. It was always about the practical side and the need to get hold of it. There was never said to be a legal barrier to getting it. It was the slow movement of everyone concerned, perhaps, to work out that there was a more straightforward way of doing it. The intervention of some people in the Professional Standards Command, in the latter part of last year, worked out a way of doing it promptly. So our current experience is that it's quite good. We get the material fairly promptly. There is a reduced delay and a more efficient process at both ends. I'll just see if I've missed anything in saying that.

**ANINA JOHNSON:** Certainly in the context of complaint oversight and assessments, we're getting body-worn video in a relatively timely way.

**PETER JOHNSON:** That's done promptly. If, of course, at some later point or for a different purpose—not just assessing a complaint but, of course, if we were investigating, then we have various legal powers that can be used to obtain that material. But, realistically, it should always be obtained at the earliest possible time, because body-worn video is of critical importance to everyone. The sooner it's made available, the better it is for everyone concerned. And so the system has improved in that respect since late last year.

**Mr TRI VO:** Artificial intelligence is very important these days. What confidentiality and information protections do you have in place for the use of artificial intelligence?

**PETER JOHNSON:** I'll ask the Commissioner, who has a better grip on artificial intelligence than I do, to respond and I'll see if I can add anything useful.

**ANINA JOHNSON:** The Commission isn't actively using artificial intelligence at the moment as part of our investigative suite. We've certainly got extensive confidentiality provisions in our legislation and we have, at a practical level, a very robust system to protect the data that we hold. We're clearly aware of the opportunities,

but also the risks that pose themselves in using artificial intelligence. In exploring those opportunities, we are aware of the importance of balancing the risks of exposing the data, exposing privacy, and things of that kind, as any high-level organisation would be. Does that answer your question, Mr Vo?

**Mr TRI VO:** Yes.

**PETER JOHNSON:** Could I add this comment: It's clear, I think, that artificial intelligence is here to stay. Therefore, it's a question of how it can be harnessed in a useful and secure way. Agencies such as ours and other investigatory agencies are thinking about this. We are conscious of that from our dealings with other agencies, both federal and state. It may be capable of being used securely. Courts are looking at these issues too. But the important thing is to work out that the net benefit is substantial and that the security is very solid. I think there's some way to go before those things are guaranteed, but it's inevitable and we are looking at it for a number of purposes within the Commission.

**CHRISTINA ANDERSON:** I would only add that we are looking at it. It does come with a considerable cost as well, so we need to take that into account, and the best areas that we can use it. As the Commissioner said, we're looking at ways that we can integrate it into our business, but it won't be in the next 12 months or so. It's going to take a long time. We're taking a considered approach.

**The ACTING CHAIR:** We've got a couple of minutes left so I might ask a few questions about a different issue, which are the integrity checks that you perform. The annual report says that there was a 17 per cent increase to 576. Is there a particular reason for that or is that just a post-COVID spike?

**PETER JOHNSON:** I'll see if our CEO can assist on that one.

**CHRISTINA ANDERSON:** There was a change in how we were receiving the integrity checks coming through. Previously, we were receiving them more evenly spaced throughout the year, and last year we seemed to get a lot together. A lot of it is tied back to police and their recruitment action. I can't tell you why there's an increase in integrity checks, but the way that we get them has—

**The ACTING CHAIR:** Are you able to give us information on things such as how many of those 576 raised concerns and some other deeper data in relation to those checks?

**CHRISTINA ANDERSON:** We would have to take that on notice.

**The ACTING CHAIR:** If you could let me know how many raised concerns and how many relate to current police as opposed to former police, that would be useful data.

**CHRISTINA ANDERSON:** It all would be current.

**ANINA JOHNSON:** Sometimes, other agencies might ask us for an integrity check. If someone has moved to Victoria, for example, we might get asked for an integrity check for a former police officer. But it's a standard part of the recruitment process for anyone looking for appointment within the New South Wales Police. So the increase of numbers may also reflect the increased movement of police officers within the NSW Police Force.

**The ACTING CHAIR:** Is there any follow-up? If you flag a concern, does your involvement end at that point so you really don't know whether they've gone ahead and hired the officer or not?

**ANINA JOHNSON:** From my understanding—but we could take it on notice—it's not a hiring process. I don't think we do them for Probationary Constables entering the force. It's at the point of promotion. So we don't know if they're appointed. Do we know if they're appointed to the role despite a concern having been raised? Not that I'm aware of, but we can double-check that.

**PETER JOHNSON:** We'll take that on notice.

**The ACTING CHAIR:** If you can take that on notice and let me know, that would be really useful. Thank you very much for appearing before the Committee today. You will each be provided with a copy of the transcript of today's proceedings for corrections. The Committee staff will also email any questions taken on notice from today and any supplementary questions from the Committee. We kindly ask that you return those answers within seven business days. Thank you very much for your appearance today.

**(The witnesses withdrew.)**

**Mr BRUCE McCLINTOCK, SC**, Inspector, Office of the Inspector of the Law Enforcement Conduct Commission, affirmed and examined

**The ACTING CHAIR:** I welcome our next witness, Mr Bruce McClintock, SC, Inspector of the Law Enforcement Conduct Commission. Thank you for appearing before the Committee today. Please note that the Chair of the Committee, Mr Phil Donato, is an apology for today and I'm chairing the proceedings as Acting Chair of the Committee. Also note the Committee staff will be taking photos and videos during the hearing. Those photos and videos may be used for social media purposes, on the New South Wales Legislative Assembly social media pages. Please inform the Committee staff if you object to photos or videos being taken of you. Before we proceed, do you have any questions about the hearing process?

**BRUCE McCLINTOCK:** Only one, which is whether my Principal Legal Advisor, Ms Tracey Tran, can sit beside me at the table here. I don't propose that she be sworn. I'm the witness, not her. But I've given evidence before, when I was Inspector of ICAC, from 2017 to 2022, and on every occasion my Principal Legal Advisor was next to me so I could consult her if it was necessary. It was the same when I was before this Committee last year. There was some suggestion that it would not be allowed—in correspondence with the staff—which surprised me because I can't see a good reason for it.

**The ACTING CHAIR:** Just let me consult for a moment. I don't have any objection to that. That's fine. None of the other members of the Committee appear to, so welcome to the table. We won't swear you in unless you start speaking.

**BRUCE McCLINTOCK:** I take responsibility here.

**The ACTING CHAIR:** Are there any other questions?

**BRUCE McCLINTOCK:** No, there are not.

**The ACTING CHAIR:** Would you like to make a short opening statement before we begin questions?

**BRUCE McCLINTOCK:** I would, Mr Murphy, just simply to explain so the Committee members have an understanding of what my role is. It's slightly unusual. It falls into two halves. There are the responsibilities that I have under the Law Enforcement Conduct Commission Act which, generally speaking, are to deal with complaints about the Commission, of maladministration and misconduct. Commission—maladministration; officer—misconduct. I'll talk a little bit about the number of complaints shortly. The second function is to oversee or audit the operations of the Commission to ensure that it complies with the law.

I've taken a broad but, I hope, appropriate view of that latter function, and indeed it flows out of the complaints function, because if I notice something about the way the Commission goes about doing something, in respect of a complaint, I will say something about it to the Commission, rather than just simply dealing with the complaint. But those are the functions that I have under the Law Enforcement Conduct Commission Act. In addition, I'm responsible for, perhaps, a slightly strange or—not strange; that's not the right word—unusual subagency called the Secure Monitoring Unit [SMU]. That was given to the Inspector's Office early in the term of my predecessor, the Hon. Terry Buddin, in about 2017. The role of that unit is to check that the law has been complied with in respect of every telephone interception warrant, every surveillance devices warrant, every control operations warrant, and so on. There are two other categories of warrants; they are, broadly speaking, the covert warrants. Other ones are the kind of search warrant where the home owner or the occupier is not given notice—covert search warrants.

The Unit has three employees at the present time. What that Unit does is physically check the files maintained by the agencies who obtain such warrants, and those agencies are the police themselves; the Commission itself, because the Commission obtains such warrants; the Independent Commission Against Corruption; and the Crime Commission. It's a very substantial task, because physically they look through every file to make sure that the law has been complied with. I have, under pieces of legislation like the Surveillance Devices Act and under the State Telecommunications (Interceptions and Access) Act, reporting obligations to various state and federal ministers, which I comply with.

I might say it's a very important function. The reasons why it was given to the Inspector of the Law Enforcement Conduct Commission are anomalous, because when the Commission was started or founded in 2017, it was an amalgamation of part of the old Police Integrity Commission and part of the Ombudsman, and the SMU was in the Ombudsman, but it couldn't go to the Commission, because it was there to supervise the Commission's warrants. So a home had to be found for it and the only logical home was thought to be the Inspector at that time, at least by the then government. That's what I do.

I've taken much longer than I wanted to and I apologise for that. To update the Committee from the situation at my last annual report, the complaints we've had about the Commission this year perhaps are slightly down, in terms of the numbers—65 from 1 July last year to the present time. The total complaints for 2022-23 were 107. So it looks as though they will be lower this year. I treat the complaints, as I hinted at earlier, as a way not merely of dealing with the complaints, but to check in to see whether the Commission's functions are operating, or whether they are behaving efficiently and properly, if I could put it like that. If I notice something, I will take action in relation to it, and indeed have done so. Examples are delays or failures to respond and so on.

I will conclude my opening remarks by saying that a very substantial part of my work so far this year has been the SMU, as opposed to supervising the Commission. That function hasn't suffered, but it has just been more time with the SMU. There have been staffing issues, staff turnover and so on, and I've made it my job to attend some of the audits that the SMU carries out, for example, of the various police headquarters, where the files for the warrants in question are maintained. I will finish with an apology for taking so long, Mr Murphy. I'm sorry.

**The ACTING CHAIR:** Thank you. It's not really necessary. What I might do is, before we go to questions, just inform you that you may wish to take a question on notice and provide the Committee with an answer in writing, and we ask that that's done within seven business days after receiving those questions.

**BRUCE McCLINTOCK:** That will not be a problem.

**The Hon. RACHEL MERTON:** I just note that in the 2022-2023 annual report you note that the reporting period coincided with your first term as an Inspector in this role. Thank you very much for outlining some of the background to the function there. I'm just wondering if you might be able to reflect on what your experience has been to date in that role as an Inspector.

**BRUCE McCLINTOCK:** There's a degree of history to the Commission. In my previous role as Inspector of the ICAC from 2017 to 2022, at one point I took on the job of, in effect, Acting Inspector of the Law Enforcement Conduct Commission, to deal with a complaint that had been made by one of the Commissioners against the Chief Commissioner. The way I dealt with that is a matter of public record. It was evident that the Commission, before Chief Commissioner Johnson and Commissioner Johnson took over, had a degree of concerning dysfunction. I can say that that has been wholly resolved. There is no such dysfunction in the current operations of the Commission, as it has been since 2022, when the present Commissioners took over. It seems to me that, generally speaking, the Commission is operating efficiently and effectively and is doing its job.

Obviously when you have an agency like that there are always going to be matters of minor concern— for example, delays in dealing with complaints, or delays in acknowledging complaints, because if someone puts in a complaint and they don't receive any response, they can get very concerned about it. It's something I'm considering right now, but I haven't yet communicated with the Commission formally about that. There are other issues that come up too. A delay in responding may be a resources issue on the part of the Commission, or a budgetary issue, which would be something that I might say something about in an annual report. Generally speaking, I am extremely happy with the way the Commission is operating.

I don't know if the Chief Commissioner mentioned it, but there are legal proceedings being heard in the Supreme Court next week, where the police are asserting that they don't have to give documents covered by public interest immunity to the Commission, in relation to critical incident investigations—a stance that I find surprising on the part of the police. I would have thought the Commission's entitlement is to know everything that the police know. I don't see how it can do its job otherwise. In the ICAC Act, there's a provision that says that the Inspector is entitled to have access to every document or piece of information that the ICAC has. I wonder whether it might be prudent to amend the Law Enforcement Conduct Commission Act to say that the Commission has an entitlement to every document that the police has. It would be better if these things could be done in real time. In any event, this is before the Court of Appeal today week, as I understand the position. Other than repeating what I said about general satisfaction with the agency, I don't think there's anything else I need to say.

**The Hon. RACHEL MERTON:** Further to that, recognising the comment about delays in responding, are there any views in terms of the adequacy of the staffing available following the machinery of government changes?

**BRUCE McCLINTOCK:** That's the sort of thing I can only see through a glass darkly. That would probably be better directed towards the Chief Commissioner. I shouldn't be flippant, but every agency always wants more resources and more staff, and they don't have to consider the budgetary constraints that the Treasury or the Treasurer do. My impression is that they're getting the job done, but I'd prefer that was answered by the Chief Commissioner, rather than by the Inspector. I haven't noticed any major problems that I could attribute to lack of staff or lack of resources.

**Mr MARK TAYLOR:** Thank you very much, Inspector. It is good to have you along again. The Commissioners from LECC who we just had giving evidence indicated that they had the power to observe legal incident interviews with officers either being present or remotely. They also indicated that that power is by consent of those present and it's never really enacted. Are you aware of that? Do you see that lack of being present at those interviews causing the LECC any issues, or do you have any comment on that?

**BRUCE McCLINTOCK:** That's something that I think I'd better take on notice. I'm reluctant to do so but, rather than taking a stab in the dark, I think I'd like to think about it and just refresh my memory about the legislation. Obviously, if you're talking about a critical incident where a police officer has, say, discharged a firearm, there may be concerns on the part of the officer—may I say, I'm speaking completely hypothetically—for example, about self-incrimination and so on, and that may impact upon the presence of Commission officers, as opposed to the police who are running the critical incident investigation. It's a significant and beneficial power on the part of the Commission, to be able to monitor the critical incidents because, of course—the Committee will be aware that the circumstances in which a critical incident is declared by the police, and that they obviously invariably involve serious harm to someone. But, as I say, I would prefer to take that on notice so I can answer it properly.

**Ms KAREN McKEOWN:** In September 2022 there was a new Memorandum of Understanding with the LECC. Are you able to comment on the operation of that and how the working relationship is between yourself and the Chief Commissioner?

**BRUCE McCLINTOCK:** I hope he agrees with what I'm about to say. I think it's a close and productive working relationship. Memorandums of Understanding are important, but they're only a guide. I have regular meetings with the Commissioners. We talk; I correspond with them. I have never received anything other than complete cooperation. Views differ in some ways on some aspects of things, but that's what you'd expect from any ordinary group of people. But, no, I think it's a productive and satisfying relationship. In fact, I'm convinced of that. I'm very pleased with it.

The role of Inspector—and I've been Inspector of the NSW ICAC, as I said. I'm also Inspector of the Northern Territory ICAC and, of course, Inspector of the LECC. It can be a strange job. The Inspector has to remind himself or herself that they're not important. What's important is enhancing the efficiency of the agency of which you are Inspector, just like the importance of the Commission is enhancing the efficiency of the police. In that sense, it's not important. I always remind myself that that is my role, and that's the only importance that it actually has. I do know of situations in other parts of Australia—in other states and other jurisdictions—where the Inspectors don't necessarily behave in accordance with the belief that I've just expressed. Again, I hope I've answered the question, but I am very happy with the relationship.

**Mr TRI VO:** Thank you for coming here, Inspector. Your investigation into a complaint received from the ABC resulted in the LECC receiving submissions and publishing an addendum report. Did this investigation highlight any other areas of concern in the complaints-handling process of the LECC? Can you tell us a little about the case and also did you or the LECC provide each other with any feedback on this process?

**BRUCE McCLINTOCK:** That complaint to me by the ABC, which concerned, as you well know, the former Police Commissioner and his behaviour, arose out of an investigation—the complaint had been made by the ABC to the Commission, and was dealt with before Chief Commissioner Johnson commenced in 2022. It had been determined by the previous Acting Commissioner. As you well know, I was dissatisfied with the way the matter had been dealt with, and I did not think it was satisfactory, so I suggested in my report that it be done differently, as a result of which the new Commissioners did take different steps and re-examined the matter. There was one issue that arose out of it, which was the language in which those reports were being written. In some of them it just seemed to me to obscure the meaning of what was being said.

Again, it wasn't applicable in relation to the ABC complaint, but a lot of the people that make complaints to the Commission, or complain to me—and please don't think I'm being patronising because I'm not—have not necessarily a high degree of education. They may come from non-English speaking backgrounds. A significant number of them—some of them, at least—obviously suffer some mental impairment. It's fundamental that they be spoken to or addressed in terms that they can actually comprehend. There were issues about that in the way the reports were written before the current Commissioners took office. I'm pleased to say that I think, principally at the behest of Commissioner Johnson, the language is an issue that has been addressed. Certainly, I've noticed an improvement from what it was previously. I think I've answered the question. If I haven't and if there is any issue I haven't addressed, please tell me.

**Mr TRI VO:** How many people work in your office?

**BRUCE McCLINTOCK:** I share the office with the Inspector of the Independent Commission Against Corruption, Gail Furness, SC. She and I share two staff—Tracey Tran, who is designated as the Principal Legal Advisor to each of us, and we also share an employee called a Business Manager, which might be a slightly misleading term. Those are the staff that I have as Inspector of LECC, under the Commission legislation. There are three staff who report to Tracey and then to me in the secure monitoring Unit. I have in total three full-time staff and one full-time equivalent because of the two employees I share with Ms Furness, and it seems to be working efficiently—although we are considering raising with the Premier's Department different ways of staffing the office in future, with different levels and maybe another support lawyer, so to speak. We have come to no firm views about that yet, but it is under review.

**Mr TRI VO:** I'm in the Committee for the ICAC as well and I think I saw Ms Tracey Tran together with the Inspector for ICAC.

**BRUCE McCLINTOCK:** Yes, you would have.

**Mr TRI VO:** She said her role is part-time. Your role is also part-time?

**BRUCE McCLINTOCK:** Yes, it is part-time. There have been times when it hasn't been part-time in a sense, because, if the work's there to be done, it must be done. It's a bigger job than I found the Inspector of the ICAC to be, simply because of the Secure Monitoring Unit. There are also more complaints than there were when I was Inspector of the ICAC—I can't vouch for the present time. When I took over as Inspector of the ICAC in 2017, there was a backlog of 20, 25 complaints, some of which had been outstanding for two or three years, undealt with. I remember that took me a long time to deal with. There's been nothing similar as the Inspector of the Commission. But yes, it is a part-time job. I used to be a barrister before I retired, and the Premier's designed the role so that a lawyer could do it part-time.

**The ACTING CHAIR:** I might ask some questions about the Secure Monitoring Unit. Inspector, you were saying there are three staff in that unit.

**BRUCE McCLINTOCK:** Yes, that's correct.

**The ACTING CHAIR:** When I look at the legislation, the requirements under each Act are quite different. Does that make it difficult for those staff when they're performing their inspection function?

**BRUCE McCLINTOCK:** No, I don't think that could be said. I think they've become experienced in dealing with it. Two of the staff are relatively new—in fact, all three of them are relatively new. There had been two staff in the SMU for over 20 years, and one of them retired on the very first day of my term as Inspector. He was replaced by another employee, who's now on maternity leave but is coming back in a month's time. There's going to be a job-sharing arrangement with the current head of the unit, who's on secondment from Crown Solicitors. But, to answer your question, no, I don't think they've had a problem with that. The job requires meticulous attention to detail but it is, in some ways, available done on a checklist basis, to make sure that each of the requirements of each of the pieces of legislation have been complied with—but you're absolutely correct in saying the requirements are quite different.

**The ACTING CHAIR:** So it could be improved, in a sense, if you had similar requirements under each Act, if that was possible? Would it be desirable to do that or you think it works okay?

**BRUCE McCLINTOCK:** It would be desirable. I was thinking of mentioning this in my opening remarks. I should be circumspect, because this is something that I've had discussion—there is another agency called the Surveillance Devices Commissioner, Mr McKenzie, and the office was created a couple of years ago. His role is to check every application for a surveillance device warrant in New South Wales before it goes to a judge of the Supreme Court to grant the warrant. He checks the affidavit to make sure that it complies with the requirements of the Surveillance Devices Act.

If he thinks there's something wrong—"wrong" is not the right word but it'll do—with the warrant application, he will say so and make a submission to the Supreme Court judge who is determining the application for a warrant. His role is, so to speak, the front end in relation to surveillance devices warrants. The SMU's role is the back end. It's checking to see whether they've been complied with after the warrant has been issued—the Commissioner is before they're issued, and the SMU after. It may be worth considering whether there should be an amalgamation of the SMU with the Surveillance Devices Commissioner. The Commissioner did not exist as an agency when the SMU was given to the Inspector in 2017.

I can see synergies, efficiencies, and saving of resources too, if that happened. Mr McKenzie and I have had preliminary discussions about it—very preliminary. I'm preparing a paper to send to the Attorney suggesting that as a possibility. The difficulty with it is that it won't merely require amending state legislation, but it will

require amendments to the Commonwealth Telecommunications (Interception and Access) Act. The Commonwealth has not been very quick in amending that legislation in the past, despite obvious need for it to do so. That strays away but it gives me an opportunity to raise something that is important. It's early days yet, and I don't want to pre-empt anything that the Attorney General might think as a result of what I say, but we do have that in mind as a way of making the regime in the area more efficient.

**The ACTING CHAIR:** In terms of the mechanics of the SMU, your job is, as I understand it under most of the legislation, that you're reporting twice a year to the Minister about what has happened, but you won't necessarily look at every warrant that has been issued in that year, will you? You'll check them all eventually, but is there a time frame in which you look at them? Is there some sort of standard there?

**BRUCE McCLINTOCK:** We try to do them as quickly as possible. Obviously, you cannot do all the warrants issued in one year within that year. Some of them are outstanding and operative for a period of months, and can be renewed or extended. We do aim to look at every single warrant that is issued under those pieces of legislation to make sure that law is being complied with. The reason why, obviously, is that each of those pieces of legislation involves a very substantial interference with what are accepted to be the rights of citizens. A covert search warrant permits a police officer to enter premises and search for property there without the home owner or occupier knowing. Surveillance devices intercept conversations, as do TI. Of course, that's the reason why there's a warrant required—because it would be illegal and a criminal offence otherwise. We do try to do it. There have been time lags caused by staffing issues, because we simply didn't have enough staff to do it. People were on long service leave and so on, and we were understaffed. We've solved those problems now.

**The ACTING CHAIR:** Is there any ability or do you have a view on whether there could be more detail provided about that work of the SMU—for example, how many problems you've picked up where there has been non-compliance with a warrant and some sort of information about what the categories of that might be and so on?

**BRUCE McCLINTOCK:** Those things are all in the reports that we provide. When we find a non-compliance, it is reported to the agency immediately—in the case of the police, the Commissioner of Police, to use that as an example. Then, if it's something trivial, like something being one day late, no, it won't be in the report. But anything that's beyond that level is reported on to the head of the agency in question at the time it's identified, and then it's reported to the Minister, in the semi-annual or annual reports that go in in relation to that. There's one other thing about the SMU, which is that they develop a cooperative relationship with the agencies that they supervise. They bear in mind the truism about agencies like that, which is that it's cooperation but not capture, because they are there to ensure that the law is to be complied with. But they do offer—if they're approached by one of the agencies whose warrants they're checking and asked a question, "Will you find it satisfactory if we do it this way?", they will give the answer there, to assist the agency.

**The ACTING CHAIR:** I think that's all the questions, Inspector. Thank you for appearing before the Committee today. You'll be provided with a copy of the transcript of today's proceedings for corrections. The Committee staff will also email any questions taken on notice from today and any supplementary questions that there may be from the Committee. We kindly ask that you return those answers within seven business days. Thank you very much for your evidence today, on behalf of the Committee.

**BRUCE McCLINTOCK:** Thank you very much for your time. It's always a pleasure appearing here.

**(The witness withdrew.)**

**(Short adjournment)**

**Ms FIONA RAFTER**, Inspector, Inspector of Custodial Services, affirmed and examined

**The ACTING CHAIR:** I welcome our next witness. I note that during the hearing Committee staff will be taking photos and videos. Those photos and videos may be used for social media purposes on the New South Wales Legislative Assembly social media pages. Please inform the Committee staff if you object to photos or videos being taken. Before we proceed, do you have any questions about the hearing process?

**FIONA RAFTER:** No, Mr Chair.

**The ACTING CHAIR:** Before we begin questions, I just want to inform you that you may wish to take a question on notice and provide the Committee with an answer in writing, and we ask that that is done within seven business days after receiving those questions. Would you like to make an opening statement before we go to questions?

**FIONA RAFTER:** Yes, thank you. Thank you for the opportunity to appear before you today. I would like to acknowledge the Gadigal people of the Eora nation, and Elders past, present, and future. The Inspector of Custodial Services is an independent statutory office that was created in October 2013, pursuant to the Inspector of Custodial Services Act 2012. We have a legislative mandate to inspect each adult custodial facility every five years, and juvenile justice centres every three years. Our focus is the treatment and conditions of people in custody and improving custodial practice.

I commenced in the role in April 2016, and since that time I have completed 146 inspections and 421 visits. I have tabled 28 reports relating to inspections or reviews, and six annual reports since then. Another 12 reports are being drafted at the moment; one of those will be tabled next week. Ten inspections are scheduled to take place in 2024. For the most part, custodial facilities are inspected according to a rotating roster, based on when they were last inspected. Thematic inspections may require specific sites to be inspected in addition to this roster. Staff availability and experience, type and location of centres, and whether the inspection will be part of a multi-centre inspection or a standalone inspection also inform the timing of inspections.

The Act and the inspection standards and methodology that we use are modelled on the Western Australian Inspector of Custodial Services, which is widely recognised as being best practice. During an inspection, the inspection team observes the conduct of operations at a custodial facility by reference to the inspection standards, applicable legislation, and policy requirements. As well as observing, we also interview management, staff, people in custody and other relevant stakeholders. There are two types of inspections we generally do: thematic and individual centre inspections. In my experience, thematic inspections—for example, health services and the review of the response to COVID-19—assist to make changes centrally that impact the whole system.

Individual centre inspections identify systemic issues at a custodial facility that need to be addressed at a centre level, but may also reflect a whole-of-system issue. Examples of those sorts of reports would be St Heliers, or the recently tabled John Morony. These result in changes being made at the centre level. The Inspector of Custodial Services does not investigate individual complaints. The office was created to be preventive, by identifying systemic issues, rather than being reactive. Sometimes we are made aware of complaints during inspection or by someone contacting our office. We will refer matters capable of local resolution to Official Visitors, or direct people to complaint agencies such as the Ombudsman, the Health Care Complaints Commission, or the ICAC. If it is a serious matter, such as an allegation of staff misconduct or corruption, I will refer complaints to the appropriate body for assessment or investigation.

I have statutory powers to request documents and data. Before any inspection, we request data and information from the relevant agencies, the custodial facility we are inspecting, and Justice Health. We analyse the information before the inspection to determine areas of particular focus. An inspection team, including specialist consultants, will conduct the onsite component of the inspection, which can take between one day, for a small court cell location, and up to two weeks, for a big complex—for example, the Long Bay complex. We generally work in teams of two for safety and evidentiary reasons. A complex inspection may have 10 people in the team, and a small location could have two people in the team. Following an inspection, we will debrief the Governor, or centre management, in relation to our immediate findings. Sometimes we require further information or data before we commence writing our report for tabling in Parliament.

The last four years have been challenging times for staff who work in custodial settings and people in custody, due to the impacts of COVID-19. The pandemic also impacted the ability of my office to complete inspections during 2020 and 2021, and a number of inspections had to be postponed. This resulted in a very heavy inspection workload of 29 inspections from the end of 2021 to the end of 2023 to ensure compliance with our

statutory time frames. We inspected all six Youth Justice centres in 2022, and we inspected 23 adult custodial facilities between the end of 2021 and the end of 2023. Inspections conducted during the COVID-19 pandemic were often impacted by ICS staff and custodial centre staff being unavailable at short notice due to illness, centre lockdowns due to COVID-19 outbreaks and changes to routines and practices to prevent or mitigate the risk of COVID-19 transmission. Consequently, some of the interviews that would usually occur in person took place virtually, either before or after the onsite inspection.

Although COVID-19 restrictions no longer apply in custodial facilities, outbreaks in the centres continue, meaning that young people and staff are still required to be medically isolated to prevent the transmission of COVID-19 in custody. Staff absences and unscheduled lockdowns remain high. This continues to impact services and programs delivered in custody. There are other systemic issues in the adult correctional system that my office will continue to focus on. Many of these, such as the age of infrastructure, were exacerbated by the pandemic, and others were exposed in the recent Astill inquiry. Staff culture and practice will continue to be an area of focus for our office, as well as the treatment of women in custody, and the treatment of Aboriginal people. The increasing number of people on remand, and difficulty accessing legal services is an emerging issue that requires attention, in my view. If the number of people on remand continues to increase, the number of people in custody will rise quickly, causing crowding, and impacting the safety and security of staff and inmates.

Finally, I would like to acknowledge the Official Visitors. My office manages the largest Official Visitor program in Australia. With the cooperation of Corrective Services NSW, we kept the program operating throughout the entire pandemic. We recently held the first Official Visitor conference since 2019, in April 2024. The conference enabled us to induct new Official Visitors to the program and provide training to new and existing Youth Justice and adult Corrections Official Visitors. I'm pleased to report that, of the 90 Official Visitor appointments to Youth Justice and adult custodial facilities, Aboriginal Official Visitors hold six Youth Justice appointments and 26 custodial centre appointments.

My aspiration when I started in the role was to build trust and capability in the Official Visitors Program, by increasing diversity and having an Aboriginal person appointed as an Official Visitor at each custodial facility. We are not there yet, but it still remains our goal. Last year Official Visitors to adult custodial facilities dealt with 8,500 complaints and over 7,000 inquiries. The majority of these were resolved at the local level.

**The ACTING CHAIR:** Where are the inspection standards for Aboriginal people in custody up to?

**FIONA RAFTER:** They are nearly ready to be published. I've done extensive consultation, including the most recent consultation being with Aboriginal Official Visitors. I've also been trialling them—essentially, piloting them—with some inspections and the reports are being finalised at the moment. My plan at this point is to, essentially, publish them as those reports are tabled in the Parliament.

**The ACTING CHAIR:** At last year's hearing they were awaiting the stakeholder feedback before being published. So nothing has moved from that position, is that right, or are we about to have them published?

**FIONA RAFTER:** They're very close to being published. At the last hearing they were with the agencies for consultation, so the agencies have seen them for a long time. They've been well socialised, and they've been acting upon them already. Since that time I've been consulting with other stakeholders.

**The ACTING CHAIR:** Will they be published before next year's review into annual reports? Can you give that commitment?

**FIONA RAFTER:** I can give that commitment, yes.

**The ACTING CHAIR:** You said that you have 10 visits scheduled for 2024. Can you explain what they are? Are they all large complexes or are they small court facilities? What are those inspections that are scheduled this year?

**FIONA RAFTER:** There are some quite big inspections scheduled. In fact, we've been on site this week at the Long Bay complex. The Long Bay complex has a number of facilities on the complex. We were at two of those facilities this week, and then we're back there the week after next for an entire week. Then we have a break for a week, and then we're back there for another week. That is a very big inspection for us. Then we also have the two rapid build prisons that are due to be inspected again, and we've announced terms of reference. They're the rapid build, which are the dormitory-style prisons. One of those is at Macquarie, which is at Wellington, and the other one is the Hunter Correctional Centre, which is situated on the Cessnock complex. They will be done as a joint inspection. They will be scheduled a couple of months apart, but the report will deal with both of them.

We are also inspecting the Clarence Correctional Centre this year. That will be a big inspection as well. The other inspection is Mary Wade Correctional Centre, which predominantly holds minimum security men on

work release. That's metropolitan Sydney. The reason I say 10 is because the Long Bay complex has multiple correctional centres on the one site. I've got staff today inspecting what's called the Nunyara facility, which is a minimum security residential facility.

**The ACTING CHAIR:** Going back to the issue of Indigenous people in custody, you made a number of recommendations around the treatment of Indigenous people in custody and they have not been met. Is that right? Not all of your recommendations have been implemented.

**FIONA RAFTER:** No, not all of them. Many of the recommendations are ongoing, and I give Corrections and Youth Justice what I consider to be a reasonable opportunity to implement recommendations. Sometimes recommendations require additional funding and additional policy development.

**The ACTING CHAIR:** I was going to ask, is it a matter of funding that's holding up those recommendations being implemented? What are the sorts of reasons that are delaying that? Can you elucidate those for the Committee?

**FIONA RAFTER:** It will be site specific. For example, there was a reasonably recent restructure of Corrections. They have changed their Aboriginal Policy Unit to a directorate. They have increased the number of regional Aboriginal Programs Officers that are now appointed to the centres to deliver support services. Those sorts of changes take some time. From my perspective, I am loath to close recommendations off too quickly, because what I am really trying to achieve is system change, and it can take time. I would rather see Corrections or Youth Justice continue, rather than close them off, and say they haven't achieved it.

**The ACTING CHAIR:** So as long as you are seeing continued improvement, you are not going to close them off?

**FIONA RAFTER:** That's right, yes.

**Ms KAREN McKEOWN:** In the 2022-23 reporting period, it says that there were 90 Official Visitor appointments across adult and youth facilities. Do you think this number is adequate to cover all facilities to a satisfactory level? If you could comment, that would be appreciated.

**FIONA RAFTER:** We have just had a recruitment round because there were a number of Official Visitors whose terms are expiring at the end of March 2024, and that coincided with our conference. When we advertise for new Official Visitors, one of the things that we do is we have a look at the numbers in each of the correctional centres, and we will make an assessment. If the operational capacity of the centre has decreased, then we may not appoint as many Official Visitors. If the operational capacity has increased, we will look to increase the number of Official Visitors. In Youth Justice, there was originally one Official Visitor per centre. After I started in the role, I advocated to appoint an Aboriginal Official Visitor to every Youth Justice centre as well. That enables those Official Visitors to be an Official Visitor every week at those centres, which I think is needed, particularly since it's a very high remand population, and many of those young people move through those centres very quickly.

In the adult centres, at the big remand and reception centres we have four Official Visitors appointed. Even though the legislation says we only need to have one, it is too big a workload for one person. We will appoint four Official Visitors, and then what they do is they generally divide up the areas, so that they do provide a consistent service. They will divide up between themselves the different areas of the correctional facility—of those very big ones—and then that means that they can take people's complaints and resolve them. Quite often they are lost property complaints, or it might be that they are struggling to see the health service. And then, because they are going to that particular area of the centre, every two weeks they can report back to those people as well.

**Ms KAREN McKEOWN:** You indicated that the remand population is actually increasing. Can I ask how many remand centres there currently are?

**FIONA RAFTER:** That is a really good question. There are the primary remand centres in metropolitan Sydney—MRRC for men—and then there is the privately operated Parklea, which also performs the same function but with private operators. The state also has another remand facility that operates for men in the Greater Sydney region, and that is John Morony. People don't go immediately into custody to John Morony. Where they get received into custody is Parklea or the Metropolitan Remand and Reception Centre, but then they will often be moved quite quickly to John Morony for the metropolitan-based centres. The women who come into custody in the Greater Sydney region come through Silverwater Women's. Dillwynia holds many remand women, but they don't go directly to Dillwynia. The big reception centres essentially assess people, and then they will transfer them to other remand centres that hold people on remand.

In the regions, several centres in the region also operate as the reception centres for their regions. For example, Clarence in the Grafton area, Mid North Coast for the Kempsey region, Shortland in the Cessnock region. Then there's Wellington, which looks after that Dubbo region. Junee, which is also privately operated, looks after the Wagga Wagga—the Riverina region. Bathurst is a reception centre as well. Tamworth is a reception centre for that central corridor and a lot of Aboriginal people from Moree come down there. Broken Hill is a reception and remand centre as well. So, they're—

**Ms KAREN McKEOWN:** Scattered.

**FIONA RAFTER:** Yes. They are all performing that function for their own particular region. Mid North Coast and Wellington also perform that role for women, because they have small women's units attached to those centres. But those centres also hold remand people that come out of the Greater Sydney area as well, because there is actually not enough accommodation within the Greater Sydney area for all of the people who are on remand. As those remand numbers continue to climb, more people will need to be sent out to the regions where the prisons are and the bed availability is, rather than being able to keep them within the Sydney metropolitan region, where they probably ultimately need to come back to, to go to court.

**Ms KAREN McKEOWN:** Is Amber Laurel part of the MRCC?

**FIONA RAFTER:** Amber Laurel is still gazetted as a correctional centre but it doesn't operate as a correctional centre. It effectively operates as a court cell. So people come into custody there, but it doesn't operate like a correctional centre. But they have AVL facilities there, and people will often have their first bail hearing there, and then they are removed very quickly into those big reception and remand centres.

**Mr MARK TAYLOR:** You talked a bit about official visitors et cetera and how you've increased the numbers and diversity. Are there enough applications by people who wish to become official visitors or is that a gap you have?

**FIONA RAFTER:** Thank you for asking that. It depends on the region. That's what we've established after running many, many, many recruitment campaigns taking many, many formats. What we find is that we attract quite a number of applications from the Sydney metropolitan region and also the Cessnock-Newcastle region. We are generally able to find people. We have more good applicants than we have the roles for, generally, in those two areas. We struggle sometimes within the regional areas. Broken Hill has been particularly challenging. We've just had someone appointed there, and we've had a couple of other people appointed there. I think that one is a difficult one, because of the remoteness. We have to target people for Broken Hill. There are particular areas where we go out and target. We do outreach to community legal centres, and to community services, to try to identify suitable applicants.

Using Broken Hill as the example, that's a centre with a really high Aboriginal population. Of course, we want to have an Aboriginal Official Visitor there, but we do targeted recruitment to identify people. Tamworth has been an area that, again, has a very high Aboriginal population within the Tamworth Correctional Centre. We have struggled to have applicants from that area. We've done targeted recruitment. Clarence, up in Grafton, is another area where we sometimes struggle.

**Mr MARK TAYLOR:** What about retention of those Official Visitors once they're in the system?

**FIONA RAFTER:** That's really important. From my perspective, what we always need to have is a balance of fresh eyes and fresh perspective, as well as experience. That's the goal. We've had quite a number of people who have been Official Visitors for 10 years. Quite a number of those are really committed to the role. They always turn up. They go in every couple of weeks. If there's a serious issue, they're sending me emails and they're on the phone. Then we have some people who move on because they move. We've had that. We've actually been able to accommodate one of our Official Visitors who was appointed to Clarence and then happened to move to Newcastle, so we were able to move them. Because there are a number of facilities on the Cessnock complex, we were able to move their appointment to the Cessnock region. So it's a blend.

**Mr MARK TAYLOR:** Talking about the issues that the Official Visitors deal with, I note that in your report you say that most complaints raised with Official Visitors are resolved there and then in the centre. Is that the usual case?

**FIONA RAFTER:** Yes. That's what the Official Visitors do. They don't have investigation powers. Their primary responsibility, apart from generally monitoring the conditions and providing six-monthly reports to me, is to try to resolve those complaints at the local level—lost property, or people might approach them about not having the phone numbers put on the system, or if they're struggling to get a medical appointment. In Youth Justice, we see that many of the complaints are around food. There was a lot of complaint around mail in the adult

correctional system and trying to have that resolved. Official Visitors work very hard to resolve matters at that local level.

If something is more serious, or potentially requires an investigation, then the Official Visitor knows that they need to advise the person that they need to contact the Ombudsman, because they will then deal with those types of complaints. That could be about, say, a segregation order, or particular classification review, or something like that, that requires more of an investigation into what happened in the process as to resolving the issue. At the same time, some Official Visitors are also told about some really serious things that happen in centres, and that's when they come immediately to me. They can't investigate them, but they will come to me.

**The Hon. RACHEL MERTON:** Inspector, if I could just pick up the issue of inquiries and complaints. I note that in the 2022-23 annual report it provides that the number of total complaints received in that financial year is almost double the amount received in the previous reporting period, despite a similar number of inmate population. I was wondering if you might be able to comment on that.

**FIONA RAFTER:** I can. What we saw is that the report before then was during the period of COVID, when there was reduced visitation by the Official Visitors. I think we were the only state where we actually managed to keep the Official Visitors going into the centres. But for their own safety—and that would've been during the period when vaccination wasn't completely rolled out. If there were COVID outbreaks at the centre, I would say to them, "You can't go in", just for their own safety. Essentially we had reduced visitation during that time. The official visitors might have gone in once a month rather than once a fortnight. The number of complaints they received came back.

**The Hon. RACHEL MERTON:** I appreciate that. Inspector, you just mentioned that the vast majority of complaints are raised with official visitors and are resolved at the centre level and a small number, if of concern, would then come into your hands. Is there anything just in terms of numbers or something? How many issues would you be managing?

**FIONA RAFTER:** It depends on the particular centre. I mentioned in my opening statement the Astill inquiry. When the Astill inquiry was announced, I saw an uptick in people willing to come forward with serious complaints, both in the women's centres, and also in the men's. So I saw increased activity, with some serious matters being raised, which was good. I did give some figures to the inquiry. I can take that on notice to give you the most up-to-date figures, because I gave the figures to the inquiry. That was as at the end of November. I know that I've referred a number of matters to other investigative bodies this year as well.

**The Hon. RACHEL MERTON:** Inspector, during the 2022-23 reporting year I note that there was an increase in the number of reports to the official visitors that fell under the discussion category—just an increase in reports under that category. Could you elaborate on what that might mean, just in terms of the category or issues relevant to this?

**FIONA RAFTER:** A discussion would mean that somebody wanted to come and speak to them, but they didn't actually have a complaint. They didn't actually have an inquiry that could be recorded against, could be quantified, but they were having an interaction. Sometimes—and we know this—people who actually do have something serious that they want to bring to someone's attention want to have that discussion and see whether they're happy that there's a level of trust, before they will actually come forward with something which is serious, and we do find that.

**Mr TRI VO:** How many staff are in your team?

**FIONA RAFTER:** There are 15 of us.

**Mr TRI VO:** When you go to the facility or prison, what do you usually look for mainly?

**FIONA RAFTER:** It will depend on the type of facility. Because we get a lot of information before we even go to the facility, we'll analyse that information. So we might look for trends. At a big remand facility, we might have a look at how many AVL facilities they have, how many legal visits are actually happening, so then we might start to get a picture of there being a delay in actually being able to schedule a professional visit. So we might look at that. We will look at the clothing that people are given. We will look at their accommodation. We will look at the cells. If it's a reception and remand centre, we know that's a really high-risk time for people. We'll go and scrutinise their cells, and look at which part of the prison they're being kept in. Are there ligature points in the cells? We'll look at that sort of thing. We'll look at what time they are given meals, and what's actually given to them by way of meals. Remand population, for example, what we're looking at, we'll look to see whether they have phones and phone numbers on their system.

If we go to a prison that is holding a lot of sentenced people, we'll be scrutinising whether there is education available at the centre. We'll be looking at the rehabilitation side of things, so looking at different things depending on what I would describe is the role and function of the facility. We'll be looking for different things. In a centre which is holding mostly sentenced, we're looking for rehabilitation. Where are they being held? Are they being held in accommodation which is suitable for their security classification? Are they minimum security but they're sitting in maximum security cells? Have they got case plans? Are the case plans being implemented? Have they got access to psychologists? What's the waitlist like on being able to access health services, education, programs, work? If it's a minimum security centre, we'll be looking at things like is there work release available? What's the preparation like for getting ready to be released? Is there leave available? So it really depends on what sort of centre it is. We'll focus on different things.

**Mr TRI VO:** I realise you said before you've been doing this role since 2016 and you've probably visited more than 400 facilities. Is it always unrestricted access you have or are there limitations? Usually when you go there and you make visits, who do you report to after?

**FIONA RAFTER:** I report to you. I don't have any issue with access. The majority of the inspections we do are announced inspections, and that's because we obtain all of that information before we go. We schedule lots of meetings with the people we think who are relevant to finding out what is actually happening at the centre. We do occasionally do unannounced visits. Predominantly, I've done those in the Youth Justice facilities. The inspections have been announced, but some of the visits have been unannounced—so follow-up to see what is happening in those centres, particularly if I've got concerns. I've never had any particular issues. Corrections, in particular, will give advice—and I seek this advice from them—if they think that there's a particular safety issue with going into a particular area or yard with somebody. They'll let me know, and I'll make a decision as to whether I think we can safely go in, or I'll find another way to speak to people.

**Mr TRI VO:** In terms of the visits, I realise that there's a lot of culturally and linguistically diverse inmates. Are translators readily available to facilitate communications with the official visitors?

**FIONA RAFTER:** They are readily available, in that there is a very good interpreter service that is available. I have seen it used in centres, and it can happen relatively easily. The policy in Corrections says—not so much for the Official Visitors and my staff, but for Corrections, who are doing the risk assessments with people—that they should use interpreters. What we often find is that interpreters are not being used. I think it's a culture and practice thing that officers will attempt to find somebody else in the prison who might speak the language. Sometimes we see a similar language, which is obviously not okay, and we make recommendations that they should use interpreter services. It's really important for health matters, for legal matters and for classification matters that they follow their own policies and do that.

**The ACTING CHAIR:** Thank you for appearing before the Committee today. You'll be provided with a copy of the transcript of today's proceedings for correction. The Committee staff will also email you in relation to the questions that you took on notice today and any supplementary questions that may arise from members of the Committee. We kindly ask that you return those answers within seven business days. Thank you very much for your evidence today.

**(The witness withdrew.)**

**Ms RACHEL McCALLUM**, Information Commissioner and Chief Executive Officer, Information and Privacy Commission NSW, affirmed and examined

**Ms SONIA MINUTILLO**, Acting Privacy Commissioner, Information and Privacy Commission NSW, sworn and examined

**The ACTING CHAIR:** Good afternoon and welcome to our witnesses from the Information and Privacy Commission NSW. Please note that the Chair of the Committee, Mr Phil Donato, is an apology, and I am chairing the proceedings today as Acting Chair of the Committee. Also please note that the Committee staff will be taking photos and videos during the hearing. Those photos and videos may be used on the Legislative Assembly social media pages. Please inform the Committee staff if you object to having photos and videos taken. Before we proceed, do you have any questions about the hearing process?

**RACHEL McCALLUM:** No, thank you.

**SONIA MINUTILLO:** No.

**The ACTING CHAIR:** Would either of you like to make an opening statement?

**RACHEL McCALLUM:** Yes, I think we both would like to make a short statement, if that is okay. Acting Chair and members, I welcome the opportunity to be appearing before the Committee today to assist you in your examination of the Information and Privacy Commission's annual report for 2022-23. As the newly appointed Information Commissioner and CEO, I would like to acknowledge the decade of service of my predecessor, Ms Elizabeth Tydd, now the Commonwealth FOI Commissioner, who oversaw the work of the IPC during the reporting period.

The IPC continues to promote information and access and privacy rights across an increasingly digital New South Wales government environment. Education and awareness-raising activities, including for agencies, are a critical part of the effective information regulation and oversight scheme, and section 17 of the GIPA Act specifically confers functions on the Information Commissioner to undertake these sorts of activities. One of our most significant challenges remains the preservation of information access and privacy rights in the context of digital government. An *Artificial Intelligence Regulatory Scan* was released by the former Information Commissioner and former Privacy Commissioner in November 2022, shortly after they last appeared before this Committee. This work, which was reported in the annual report for the year in review, provided a point-in-time overview of global approaches to identify the risks associated with artificial intelligence.

The recommendations made in the scan form the core of the Information Commissioner's submission to the Legislative Council Portfolio Committee No. 1's inquiry into artificial intelligence in New South Wales. I appeared, together with the Acting Privacy Commissioner, at the recent public hearings for that inquiry. The IPC submissions included that updates to information laws should be made to keep pace with the adoption of automated decision-making in the public sectors that we oversight.

I can already see, in my short time at the commission, that the IPC is a small agency that works hard to manage the financial and resourcing constraints it faces, while still delivering to a very high standard. In the current year the IPC received a reduced annual budget allocation, compared to the year under review here today. Our key corporate services are also provided on a user-pays basis through another agency. These have increased markedly over recent years, and I do not expect them to remain steady in 2024-25.

To date the IPC has not been invited to participate in the new budget management arrangements that apply to other integrity agencies. Those arrangements reflect the special position of oversight agencies reporting directly to parliamentary committees, such as this one. The IPC's annual budget allocation must, in my view, meet its non-discretionary expenditure, and should reflect what it costs to perform all the independent statutory functions conferred on it.

I would like to thank the team at the IPC and the Acting Privacy Commissioner for their support during my first two months in office. Thank you.

**SONIA MINUTILLO:** I am pleased to appear today to assist the Committee with its review of the exercise of the functions of the New South Wales Privacy Commissioner during the 2022-23 reporting period. I would like to briefly highlight some significant matters that were of particular focus for the Privacy Commissioner in that reporting period. Notably, the passage of the legislative amendments by the New South Wales Parliament in November 2022 to provide for the establishment of a Mandatory Notification of Data Breach Scheme was a significant step in the strengthening of privacy protections in New South Wales.

A first among state and territory governments, the MNDB scheme, as it's commonly referred to, was a timely and critical reform to the New South Wales privacy framework, within a context of increasing use of digital technology and data for service delivery. At a time of heightened risk of cyber security threats, data breach preparedness and response has never been more essential to robust privacy governance. The Mandatory Notification of Data Breach Scheme provides a clear framework for responding to data breaches, and facilitates prompt notification to individuals at serious risk of harm if their personal or health information is involved in a data breach.

Throughout 2022-23 the IPC worked to support the implementation of the Mandatory Notification Scheme. In the lead-up to the commencement of the Scheme, the IPC developed and released a suite of extensive resources to position agencies to meet the requirements of the new Scheme. Those resources for agencies included statutory guidelines, self-assessment resources, bimonthly newsletter updates, a webinar, and agency and regulator updates to privacy practitioners at their network meetings. Resources were also developed to support citizens in their understanding. That commitment to enabling agencies has continued, with further resources released, including e-learning modules and further guidance on specific matters, such as estimated cost of a data breach.

The IPC welcomed receiving additional funding to establish and regulate the MNDB scheme. The provision of this funding was essential to ensure that the IPC was properly resourced and able to effectively support the implementation and ongoing administration of the scheme. Ensuring that appropriate resourcing is provided to enable the IPC to regulate the Scheme will continue to be necessary in future years. The November legislative amendments also extended coverage of the privacy legislation to state-owned corporations that were not regulated by the Commonwealth. That extension to state-owned corporations ensured that a regulatory gap that had been present has now been addressed.

Additionally, during the year the IPC prepared for the commencement of the Public Interest Disclosures Act, which introduced a privacy contravention into the definition of "serious wrongdoing" under the PID Act, and now includes the Privacy Commissioner as an integrity agency able to receive and investigate a PID. That was not previously a role for the Privacy Commissioner. These changes recognise the significant harms that can occur when public sector agencies or officials fail to exercise their functions in accordance with the legislation.

I look forward to continuing the IPC's effective engagement with public sector agencies to ensure that the personal information of New South Wales citizens is managed and protected in accordance with the principles under the legislation. In closing, I would like to take this opportunity to also thank the staff at the IPC in supporting the work program of the IPC and to formally recognise the former Privacy Commissioner, Samantha Gavel, for her advocacy for privacy rights generally and for the establishment of the MNDB scheme, which ultimately commenced following the conclusion of her statutory term. Thank you.

**Ms KAREN McKEOWN:** I just need to make a disclosure that I know Ms Minutillo. We worked together some significant years ago. I have been trying to do the maths. I believe it was around 20 years. I just wish to bring that to the attention of the Committee and make that disclosure.

**SONIA MINUTILLO:** Can I just perhaps say that your memory is certainly better than mine. I acknowledge that that is likely to be quite a long time in the past.

**The ACTING CHAIR:** Before we begin questions, I inform witnesses that you may wish to take a question on notice and provide the Committee with an answer in writing. We ask that you do so within seven business days after receiving those questions from the secretariat. I will start with some questions. Are either of you aware of the Department of Communities and Justice AI research project in relation to out-of-home care?

**RACHEL McCALLUM:** I'm not personally aware of that.

**SONIA MINUTILLO:** I would prefer to take that on notice to confirm whether perhaps my predecessor or my colleagues—but not in recent times have I been involved.

**The ACTING CHAIR:** I have a number of questions about it. When I looked at the annual report, I'm wondering—and these are really my questions—did the privacy commission provide consent for the use of any health or personal information in relation to that artificial intelligence research project, trial or whatever it may well be? It was reported in January of this year that the Department of Communities and Justice is creating an artificial intelligence-based automated decision framework for out-of-home care. I just can't find in the annual report if consent was given, whether the privacy commission did that, the basis on which it was given and the nature of it, whether that information came from every body involved in out-of-home care or otherwise.

If you could provide the Committee with information about the basis on which that decision was made, what legislation, exactly what the information was that was provided, what purpose it's going to and whether any

of the people who were involved in out-of-home care provided consent—or was it just the commission providing consent for the use of that information? You may need to take all of those questions on notice, and I perfectly understand that because you are new in the role.

**SONIA MINUTILLO:** I'm happy to do that.

**RACHEL McCALLUM:** Yes, thank you. We'll take that on notice. I might add, by way of comment in relation to information access that, as I said, I'm not personally aware of this particular project or proposal. But whilst privacy aspects may be relevant—or appear to be relevant—in the space of information access rights and automated decision-making, there are also aspects there that we are encouraging agencies to contemplate when they are considering deploying artificial intelligence. Both the transparency elements to such projects, as well as the privacy protection elements, are important. By way of example, we have advocated for—we are still advocating for—agencies to consider, if they are using artificial intelligence in their decision-making, that to be transparently disclosed on their websites. There are statutory requirements, in relation to the GIPA Act—so we are encouraging agencies to do that, so that people who are provided with services, or are subject to decision-making by government agencies, are aware of that.

**The ACTING CHAIR:** If you can also take on notice and let me know where in an annual report this may have been disclosed—because I understand there's a requirement to disclose every time there's a request for access to that health information for an ethical research purpose. Is that right?

**SONIA MINUTILLO:** There are guidelines that apply in relation to health research projects. Those guidelines will dictate how that research project is required to be followed and applied, including things around access, but I am happy to take that and provide a fulsome response.

**The ACTING CHAIR:** If you can explain the basis on which, if it has been provided—permission in some way or consent—how that has been done, that would be great.

**Mr TRI VO:** Congratulations, Information Commissioner. Since the last time we met, your position has been confirmed. Some 55 per cent of the community were aware that they have a right to access government information in 2022-23. This fell from 59 per cent in 2021-22. Could you comment on this? Why the reduction in people knowing that they can access government information through the Government Information (Public Access) Act?

**RACHEL McCALLUM:** I can't comment specifically on the reasons for a drop in relation to that research that we do regularly about GIPA information access rights awareness. I could probably take on notice part of that question, but I can't personally speculate now as to why there was a drop between those two reporting periods. But I could take it on notice and see if the research reveals any further information about that.

**Mr TRI VO:** The previous Information Commissioner recommended amendments to introduce mandatory proactive disclosure of the use of AI. Has any progress been made to introduce these amendments?

**RACHEL McCALLUM:** Not to date, no. That is something that the Commission is continuing to advocate for. As I said, that was a recommended amendment that was included in the submission that was made in relation to the AI inquiry, and that is something that I will be pursuing. I should note that, although artificial intelligence is not called out specifically as a matter that must be disclosed in an agency's information guide, I have taken the position in the most recent bulletin sent to agencies that when agencies are reconsidering their agency information guides, this is a matter that they should be considering, notwithstanding that it is not specifically referred to in the legislative provisions. But I think it would be clearer for all agencies if there was a specific reference to disclosures about the use of artificial intelligence.

**Mr TRI VO:** Do you think the Information and Privacy Commission is currently able to effectively deal with AI-related issues and complaints within its current powers and regulatory framework?

**RACHEL McCALLUM:** I might take that on notice, if I could. It wouldn't be the role of any Information and Privacy Commission to specifically oversight the technological aspects of artificial intelligence, for example. Our role is to look at the way in which the conduct of agencies impacts on information access and privacy rights. So we wouldn't be regulating technology per se, I would imagine. What we would be interested in is whether or not our stakeholders are aware of when artificial intelligence is being used to augment or assist in public sector decision-making.

**Mr MARK TAYLOR:** Commissioner McCallum, your organisation undertakes compliance audits in relation to GIPAA compliance by organisations, particularly local councils. Have you noticed any themes or ongoing issues—not so much themes—with any of the organisations?

**RACHEL McCALLUM:** Yes, in the reporting year we did undertake audits that do touch upon local councils, which I think was specifically your question. I'm not sure that I can answer trends. We do choose what the topics of the audits will be, based on the data that we have in the preceding year. That is how we make decisions, or an issue may arise in another way. But in relation to the topics of the audits that might have touched upon local councils recently, it has been about the mandatory disclosure of things such as pecuniary interest declarations of councillors, and in relation to other disclosure logs issues. In relation to a general audit that we've done in finding agency information guides, it has been harder in that sector to locate some of those information guides online. So, yes, they're the most recent compliance-related audits.

**The Hon. RACHEL MERTON:** Thank you both for being here with us today. Inspector, if I could start just in terms of issues to do with staffing. I'm aware, following an internal staff review, that only 62 per cent of IPC's staff were satisfied with current systems, policies and procedures. Just checking how this might be being addressed.

**RACHEL McCALLUM:** Yes, of course I am aware of those previous results, and I am only two months into the role, of course, so I am taking stock, I suppose, of the considerable efforts that my predecessors have gone to address those issues. I guess the most significant thing that we've done in the time since I took office is commenced our strategic planning for the next financial year. And, as part of that, we have in parallel started to undertake—or are undertaking, I should say—a review of the culture of the Information and Privacy Commission, to try to address some of the barriers that staff might have felt were there when they were answering that question: what they are, and how we can address them in our approach to managing people and culture in the organisation from now on.

**The Hon. RACHEL MERTON:** Then, further to that, in terms of the People Matter Employee Survey—and I appreciate you were a new appointment, and this represents some history also of the agency. But we've seen quite a reduction on the issue of wellbeing and inclusion and diversity in terms of the employee survey. Are those two issues that are on the priority list for consideration?

**RACHEL McCALLUM:** Yes, they are. As I said, I can't probably give the Committee a fully formed view about what measures we will be taking now, but in the next business period, I suppose, to address some of those things. Without wanting to undermine at all the importance of those findings, I also do note that we are a very small agency, and so it is difficult at times—you will get some quite significant fluctuations, I suppose, in statistics occasionally. It may not be as much of a reflection on changes that have occurred within that agency. So I'm still trying to get my head around why it is that those results were not as positive as they certainly have been. There's been a long history of very positive feedback. So I think it is a challenge for me as a new CEO. But I'm hopeful. We've had some pretty productive engagement with staff in the last eight weeks since I've been there, but I think it's probably a little early for me to tell how effective that is going to be. So obviously I'll be keeping a very close eye on it.

**The Hon. RACHEL MERTON:** Just in terms of retention rates of staff, what do we know about that?

**RACHEL McCALLUM:** The retention rates, I suppose, are—I do have a figure in here; if you'll excuse me while I go through the—at a point in time. Just bear with me. A separation rate, I suppose, is the data that I have with me here today—if that's of interest—rather than a rolling retention rate. I could take that on notice and perhaps give an accurate figure of retention rate over time, I suppose. Is there a particular time period, length of time, that you would be interested in?

**The Hon. RACHEL MERTON:** Not specifically, no. Just in terms of maybe the last—

**RACHEL McCALLUM:** The last three years?

**The Hon. RACHEL MERTON:** Yes, correct, three to five years.

**RACHEL McCALLUM:** I'll take that on notice.

**The ACTING CHAIR:** Thank you for appearing before the Committee today. You'll each be provided with a copy of the transcript of today's proceedings in order to make corrections. Committee staff will email any questions that you've taken on notice and any supplementary questions from Committee members. We kindly ask that you return those answers within seven business days. Thank you for your evidence today. That concludes our public hearing today. I place on record my thanks to all the witnesses who appeared today. I also thank Committee members, Committee staff, Hansard and technical people involved in the conduct of the hearing.

**(The witnesses withdrew.)**

**The Committee adjourned at 16:25.**